

MINUTES
Montana Fish, Wildlife & Parks Commission Meeting
1420 East Sixth Avenue
P. O. Box 200701
Helena, MT 59620-0701

May 9, 2002

Commission Members Present: Dan Walker, Chairman; Tim Mulligan, Vice-Chairman; Darlyne Dascher; John Lane and Mike Murphy.

Fish, Wildlife & Parks Staff: Jeff Hagener, Director; and other Department personnel.

Guests: Paul and Melissa Tuemmler, Montana Trappers Assoc. (MTA); Don Nickman, PPSA; Bill Myers, Pointer Enterprises, Inc., Bigfork; Jean Johnson, Montana Outfitters and Guides Assoc. (MOGA); Jay Bodner, MSGA; Mary Ellen Schnur, MOGA; Daniel Lorenzetti, Three Forks; Linda Rice Lorenzetti, Three Forks; Jim Buell, MTA; John Hughes, MTA; Dave Vidrich, MTA; Terry Comstock, Northwest Houndsmen Assoc. (NWHHA); Terry Zink, NWHHA; Joe and Aggie Helle, ranchers, Dillon; Mark Petroni, U.S. Forest Service; Jim Lechleitner, MSHA; Mable Deane, MSHA; Curtis Spindler, B.A.S.S.; Larry Copenhaver, Montana Wildlife Federation; Robert Hartwell, Beaverhead Outdoors Assoc.; John Wilson; Hugh Zackheim, River Network; Alan Joscelyn; Jim Volberding.

Present but did not sign in: Larry Michnevich, Grover Hedrick, John Arrigo

Topics of Discussion:

- 1. Opening - Pledge of Allegiance**
- 2. Approval of Commission Minutes, April 18, 2002 meeting**
- 3. Approval of Commission Expenses through April 30, 2002**
- 4. HB 454 Rules - Tentative**
- 5. Montana Trappers Assoc. Presentation - Information**
- 6. Lone Pine Acquisition, Region 1 - Final**
- 7. Cobblestone FAS Appeal, Region 3 - Final**
- 8. WMA Grazing Leases - Final**
- 9. Jefferson River Turkey Transplant, Region 3 - Final**
- 10. Reissue Non-resident Deer Combination Licenses - Final**
- 11. Greenhorn Sheep Transplant MOU, Region 3 - Final**
- 12. Moose, Sheep and Goat Quotas - Tentative**
- 13. Mountain Lion Seasons and Quotas - Tentative**
- 14. Moose and Sheep Auction Rules - Tentative**
- 15. Ft. Peck Management Plan Appeal, Region 6 - Final**
- 16. Fishing Access Site Enhancement Program project Approvals - Information**
- 17. Three-Dollar Bridge Acquisition, Region 3 - Final**
- 18. Dillon Children's Fishing Pond Donation, Region 3 - Final**

19. Acceptance of Canyon Resources Minerals - Final

1. Opening - Pledge of Allegiance. Chairman Dan Walker called the meeting to order at 8:05 a.m. and led the Pledge of Allegiance.

2. Approval of Commission Minutes of April 18, 2002. Commissioner Darlyne Dascher asked to pass on the minutes at this time and vote on them at the June meeting. The rest of the Commission agreed.

3. Approval of Commission Expenses through April 30, 2002.

***ACTION:** Commissioner Darlyne Dascher moved approval of the Commission expenses as presented, Commissioner John Lane seconded, and motion passed.*

Director Jeff Hagener passed out information about the meeting in August of the Western Assoc. of Fish and Wildlife Agencies and urged Commissioners to look at it and let the Director's Office know if they wanted to attend. Walker said he plans to be there.

4. HB 454 Rules – Tentative. Don Childress, Wildlife Division Administrator, passed out the proposed tentative rule for HB 454 and gave a brief history of it. This legislation was designed to assist in opening lands to elk hunting, and provides opportunity for a landowner to receive a permit as well as additional permits to be issued under a contract for the hunt area. It would also provide additional public opportunity in terms of general permits available for the hunting district.

The first part is proposed hearing dates and locations. Looking to adopt final rules in August and have them available for the 2002 fall season. Want to be sure when the Commission considers these proposals they be in conjunction with the normal quota process. **Commissioner Tim Mulligan** asked if the Commission would look at the permits or the agreement. **Childress** said this proposed rule makes it a joint decision with the Commission and FWP.

The statute says the department will determine eligibility and Rule II is the proposed eligibility, established at 2,500 acres with sufficient elk use on the property. Rule III is the actual contract and this rule also identifies three categories of hunters. Rule IV, "Process for Commission Consideration of Permits," deals with the time frame; dates are not given as Commission meeting dates can change. Rule V is the process for selecting permit holders.

John Lane asked if the 2,500 acres were contiguous. **Childress** said not necessarily. Must be described as in the hunt area. They will look at that in terms of what is realistic. **J. Lane** then asked about Rule III and how distribution of public hunting days is determined. **Childress** said that would be part of contract negotiated with the landowner. It will be spelled out as to exactly when people have opportunities to hunt. **Mulligan** asked if the statute requires putting in minimum number of acres. **Childress** responded that the statute says the department will determine the criteria. It says, "In order to be eligible for a permit, the landowner must own occupied elk habitat that is large enough in the department's determination to accommodate

successful public hunting.” **Mulligan** said he questions having a set number in a rule that ties our hands if we had a situation where we might want to work outside of that. How hard would it be to work outside of that? If someone had 2,200 acres and a lot of elk on their place the whole year, how much latitude do we have to work outside of this? **Childress** said that is why they go out for public comment in rule making, get some feel for what the general idea is, and have some criteria. **Mulligan** said we need the criteria, but can it be written in a way to have some latitude? Hate to see us have to change an ARM rule. **Childress** said we could say 2,500 acres unless there are special circumstances warranting something different. That could provide opportunity to work within the rule.

Alan Charles, Landowner Sportsmen Coordinator - That’s a good point and they discussed it. They were trying to elicit public comment along with experience they’ve had with landowner preference. In this case they need enough land that not only has plenty of elk, but also provides sufficient public hunting opportunity. It is somewhat arbitrary, but could easily draft language to allow some flexibility. **Commissioner Mike Murphy** asked if there was a variation as to how many permits that contract would be for based on the number of acres. **Childress** said that is part of the negotiation. There is not a hard, fast limit. The percentage is 1:4 in terms of landowner vs. public, but it doesn’t mean there is just one permit. **Walker** said there could be a situation, then, where there would be a landowner permit and a single. **Childress** said, “No.” It’s 1:4. There would be a landowner permit and four public hunting opportunities, or you could have two landowner permits and more public permits at the same ratio. **Walker** said, “But the ratio would not change.” **Childress** responded, “Right.” **Charles** said the legislation specifies, “No more than 20% of the permits issued under HB 454 may go to landowners.” So with HB 454 permits it is a 1:4 ratio, and you have additional public opportunities provided by hunters who have district-wide permits. For the permits that you would authorize, it’s a 1:4 ratio - 1 landowner, 4 public. You cannot have 2 landowner, 4 public. No more than 20% of the permits authorized may go to landowners. **Walker** asked if you could negotiate something like 1:10. **Charles** said, “Yes, but no more than 20% may go to landowners.” **Mulligan** asked if there was a set maximum number. **Childress** said, “No.”

Mulligan said this could end up being a competitive process. **Childress** said they are looking for places where there are problems managing elk and there would be some criteria for that. **Walker** said what this means is they want it all in place by August when the quotas are set so these can be included in the quotas. That means all contracts must be completed by the Commission quota-setting meeting. **Childress** said, “Right and it fits with where we are in terms of our block management agreements.” **Walker** said sometimes they have trouble getting that done so this seems restrictive. **Charles** said the only crunch would be this first year when the rule making is going on, and there is some uncertainty there. If the rules are adopted, this fits precisely with negotiations for block management and other hunter access. They should be in place by mid-summer so they know by the first of September.

ACTION: *Mulligan moved to accept HB 454 as a tentative rule; Dascher seconded; motion passed.*

5. Montana Trappers Assoc. (MTA) Presentation - Information. **Melissa Tuemmler** of MTA said this session is for the Commissioners to view equipment and methods used in trapping. **Jim Buell**, MTA member from Gildford, Montana, handed out a packet with their newsletter and informational materials. MTA represents organized trappers in Montana. There are also members in Canada and several surrounding states, and they are affiliated with national groups such as National Trappers Assoc., Fur Takers of America and U.S. Sportsmen's Alliance. Work closely with stockgrowers, wool growers and private landowners who might be experiencing livestock predation or sustaining damage such as from beaver. They assist wildlife biologists and work with Brian Giddings, FWP Furbearer Coordinator, and Thomas Baumeister of the department's hunter education program. Their organization stresses conservation and education. Conducted trapper programs throughout the state and reached about 250 students last year in their programs. Three years ago they started a trapper youth camp, which has grown from 86 the first year to 148 booked for this year.

John Hughes, rancher from north of Roundup, introduced **Dave Vidrich** from Butte. They are available to answer questions, demonstrate equipment they use and explain some of the terms. Should anyone have questions in the future are welcome to call. **Vidrich** showed the snare used for animals like fox and coyotes, which has a breakaway system to release larger animals such as deer and livestock. **Commissioner Dascher** asked how much force was needed to release a larger animal. **Vidrich** said 240 lbs. will break away on one snare and 180 lbs. on another. They are striving for one that would hold the target animal and release non-target animals. **Director Hagener** asked if the releases are required by statute. **Vidrich** said it will be mandatory in November for all snares to have the release. The terminal end has a spring and lock on it and the spring puts more tension to kill a coyote more quickly. Will release most foot catches. Demonstrated a foothold trap and showed the part of device that holds the animal rather than cuts them. Most are center swiveled so animal can't bind up the chain. They emphasize the more humane traps in their education program. Have smaller traps for animals like muskrat, and showed body grip traps of different sizes used for beaver, otter, martin, wolverine, etc. **Dascher** asked how they release which **Vidrich** demonstrated on the body traps. **Dascher** asked specifically how a dog would be released. **John Hughes** said these are used primarily underwater. A different type is used on land and it has a rope. Biggest thing with body traps is to use common sense and if a trapper thinks they might catch a non-target animal they should not use the trap. Education helps in this regard.

Hagener asked about the anti-trapping movement in Montana. **Hughes** said three or four years ago a dog was caught in a trap and killed. The anti-trapping people were quite vocal about that. Trappers in Montana try to keep a low profile and use common use. Other states have outlawed trapping but are having to reinstate it as the furbearers need to be managed. **Walker** asked about how to get in touch with them if people need trappers. **Vidrich** said he has business cards at the FWP office in Butte. He charges \$25 each to trap a beaver. They cannot be relocated as no one wants them. **Hughes** said the FWP Region 5 Headquarters office keeps a list of trappers. Prices vary by trapper and species. **Commissioner Mulligan** said historically people have called FWP. He refers calls he receives to local trappers. **Hughes** said people may call MTA for referrals. **Melissa Tuemmler** said the trapping regulations are very good, and there have been few incidents of pets or livestock caught in traps in Montana.

6. Lone Pine Acquisition, Region 1 - Final. **Doug Monger**, Parks Division Administrator, said Region 1 proposes is to acquire 41.1 acres of forest land that borders Lone Pine State Park. Local residents currently use the property as recreational land and park designation would allow that traditional use to continue. Value of the acreage is approximately \$205,000. FWP proposes using Parks funding sources for half the acquisition and federal Land and Water Conservation Funds (LWCF) for the other half. Parks has money in the bank for this acquisition and 1993 Legislative authority to acquire in-holdings. This property would allow Region 1 to fulfill a long-standing need to develop an 8-12 car parking lot near Valley View Drive. A substantial portion of Lone Pine's visitation occurs through the park's lower, Valley View Drive entrance, but there is no parking lot to accommodate the vehicles. Consequently, visitors are forced to park along the county road near this entrance, creating traffic hazards and homeowner conflicts. Approximately one-half mile of trail would be constructed to connect the new parking lot with Lone Pine's present trail system.

There was a 31-day public comment period on the draft EA for this project through the end of March, 2002. There were 17 written and oral comments, all of which were favorable. Two comments expressed concern over the parking lot being near their homes. Berms and vegetation will be used to screen the property. All of the neighbors were favorable about this acquisition and are pleased the state will buffer the area. Two favorable comments came from the city of Kalispell. One negative comment had concerns about the government owning more property. Concerns were also expressed over potential increased crime. A gate will be installed and closed nightly. It is not uncommon for the department to hire a neighbor to keep a watch on property and lock gates at night. There will be no management changes on the property. About \$1,000/year is estimated to maintain the parking lot and handle weed control.

Monger said if the Commission approves this acquisition, they must go to the Land Board as it is over \$100,000; that is scheduled for May 20. **Commissioner Lane** said one comment questioned the safety of the approach to this property. **Monger** said they worked out a different approach. That comment was valid and has been mitigated with the seller to use their subdivision for the last 50 feet or so of the approach. It looked acceptable when he saw it last week. **J. Lane** said the commenter also mentioned the approach looked steep, but on the map it doesn't appear so. The gravel road there does not show signs of erosion and washboarding so doesn't believe steepness will be an issue. **Commissioner Murphy** said the new approach would reduce some of that grade. When he saw it the approach looked good. **J. Lane** asked if the access now being used is deeded access into the park. **Monger** said the trail access north of the proposed acquisition is deeded. What is not deeded is parking for that trail access. The acquisition started in response to neighbors' desire to do something about trail access. Neighbors approached the state with the idea of buying the acreage because of their concern over access. **Mulligan** asked what would keep people from parking on the street. **Monger** said they should be encouraged by a good parking lot a half-mile away. The county will likely put up a sign on that portion of the county road, "No Parking." **Murphy** said the only comment he received was concern about the state owning more property, but that individual didn't seem concerned about this particular property impacting him. He thinks this acquisition will alleviate some problems there, and good efforts are being made to address concerns people have

expressed. This is a good addition and given the existing situation, shouldn't add a lot of cost to the state for maintenance. **Dascher** asked if money was set aside. **Monger** said, "Yes. It is covered in the 1993 legislative appropriation for acquisition of in-holdings, which is being matched with about \$105,000 of Land and Water Conservation Federal Funds."

ACTION: Commissioner Murphy moved to approve the acquisition of approximately 41.105 acres as an addition to the Lone Pine State Park. This is contingent on approval of the application for LWCF funding by the National Park Service. John Lane seconded. Motion passed.

Monger said he wanted to note that the State Parks Futures Committee will meet in Glasgow with the Region 6 park selection committee on May 29, 30 and 31. They will also meet in Kalispell on June 10-11.

7. Cobblestone FAS Appeal, Region 3 - Final. **Jack Lynch**, FWP Legal Counsel, said all Commissioners received the administrative record containing all of the correspondence and decisions made. This meeting was set for the oral presentation. According to the rules established for this hearing, no additional matters are to be submitted unless a party can show they were not available before.

Daniel Lorenzetti, representing the Madison River Alliance, said he represented not just people who filed the appeal, but a lot of people who live along this part of the Madison River. They believe the Commissioners need to hear the types of things they have been trying to tell FWP for quite some time. The Commission asked them last fall to return and present more information on this issue. They were told the only avenue to come before the Commission was to formally file an appeal. Doesn't understand that as the agency has the opportunity to educate the Commission on a number of matters in informal work sessions but they were denied that opportunity. They were also told they can only address the Commission on the issue of this appeal though there are two substantive issues with regard to Cobblestone. One is what this appeal is based on, which is the building of the footbridge. The other is the poisoning of an irrigation ditch, which runs along their property and property of many people who are part of the Madison River Alliance. They have been told the poisoning issue cannot be appealed and they have no choice there. Their only avenue is to attempt to sue FWP to prevent poisoning of an irrigation ditch from which they draw their water, and their cattle and livestock drink from. Feels this is indicative of how FWP communicates in matters like this.

There are significant due process problems with this entire process of decision notice. There have been many irregularities and their right to appeal has been greatly undermined. In the beginning they were told they could appeal both matters before the Commission and told to file written appeals. They did so and then they were told they could not appeal one issue. Even with basic information of where they needed to file and who to send the appeals to they were given misinformation. Has spent hours trying to weed his way through correct information and misinformation just to be actually heard and to exercise their rights as citizens.

Another due process irregularity was with how the original decision notices were rendered. Both were rendered and signed by Pat Flowers, Regional Supervisor of their area. Subsequently, members of the staff authored them. There are significant objectivity issues on who authored the decision notice or whether it was something he did taking staff recommendations. His understanding is that original decision notices promulgated by this region were supposed to be done by the Regional Supervisor with an "independent voice" listening to both the citizens who made public comment and also to the staff. Question whether that could have been done if the authoring of those decision notice documents was not done by the Regional Supervisor, even though he signed them.

There is also a significant due process issue with regard to the Director's decision. After the original decision notice, they appealed and the Director of FWP made his decision on the matter. They have always communicated to FWP their whereabouts. He and his wife travel quite frequently because of their occupations and so do the other people formally on this appeal. FWP has their e-mail addresses. They have a variety of their mailing addresses, but when the Director's decision was promulgated and when it was mailed, it gave them 10 days to appeal that decision. Not only was the Director's decision mailed to the wrong address, but it also took this agency five days to get that decision notice in the mail. From the date on which the Director's decision notice was issued and signed, five days later it was postmarked in Bismarck, North Dakota. It got to them just two days before their ten days for the appeal expired. That forced them to spend a considerable amount of time trying to negotiate with FWP an extension to that appeal, which they were subsequently granted. It's another example of FWP playing fast and loose with the administrative rules, which undermines their ability to have public comment.

Several individuals who appeared at the public hearings in Three Forks, one of which is a party to this appeal, made a public comment which was not recorded in the public comments and his name does not appear on any list of people who are recorded at those meetings. Has subsequently found there were several other people who were in attendance at that meeting who spoke and whose comments were not recorded in the public record, and whose names were not on the list of any of the documentation. Those people are rightfully very angry. They complained to this agency in writing. He has seen several e-mails from people who told the department they were at the meeting, made comments, and yet were not made part of that record.

Only after the appeal was filed did FWP begin to take the matter seriously. For five years they talked about issues and problems at the Cobblestone FAS regarding vandalism, people setting fire to things, cutting fences, and lawlessness that goes on at the site. Now that they have filed the appeal, the agency began to take notice. It is unfortunate that citizens like them have to get the attention of the agency by becoming a thorn in their side by filing an appeal on a particular matter to get them to come to the table to discuss matters of the Cobblestone access site.

When they filed an appeal, soon afterward they got a call from the Legal Department asking them to come to a meeting in Three Forks to discuss some issues surrounding the Cobblestone fishing access. Larry Peterman appeared and Becky Engstrom. They had a very nice conversation about some of the outstanding issues with regard to the access. They were issues of security, the footbridge, the poisoning; those sorts of things. It was a very informal meeting in

which Becky took notes and they all came away feeling things were going to be very positive from that point on, and they had opened the line of communication with the agency. They later learned the agency categorized that meeting as a hearing and has included evidence by notes they took in comments to the Director. The Director has used a portion of that as the basis of their decision. This was not an evidentiary hearing, and it was not an administrative hearing. It was neighbors concerned about the access who were attempting to try to open a dialogue with this agency. They feel the agency essentially took that particular opening and tried to categorize that as an administrative hearing where they were allowed to present evidence. It was not that at all. Essentially it was just a goodwill gesture to try to open up communication. There were a number of positive things that resulted from that meeting but they don't appreciate it being categorized as a formal administrative hearing, which is, in fact, what they did in the documents.

You have a unique opportunity with regard to this appeal to tell this agency they need to respect the citizens they serve and do a better job by following the rules set forth by this agency, the Commission and the Legislature. This disregard of their rights in terms of due process erodes confidence in this agency. Has heard the comment from a variety of people who have said, "You're wasting your time talking to Fish, Wildlife & Parks; they're going to do what they want to do anyway." Choose not to believe that. Choose to believe this Commission and this agency will listen to citizens but they must be given the right to be heard and they must also be given their rights in terms of due process. That is why they would like to ask the Commission to uphold their appeal in the matter of this footbridge because it is the trigger to them actually doing what they need to do at Cobblestone. They think the Commission should ask that this be reopened to public comment because they feel there are a number of people in the public who have made public comment and the public comment has not reached the Commission or has not been recorded.

There seems to be a misconception on the part of lots of members of the public that they want this particular access site closed. They live next to this access and they don't want it closed. They think the public deserves a right to fish at this access. It was purchased with public funds but they feel it should be done in a lawful manner. It is not being done in a lot of cases in a lawful manner and that is their concern. They do not want this access closed on a permanent basis. They believe it needs to be closed on a temporary basis because of a serious problem at this access. Suggesting there are lots of complex issues regarding this particular access and lots of issues regarding due process and any others. If the Commission wishes they could schedule an informal work session to talk about these sorts of things in the future. If you don't think you have the basis to make a decision on this appeal right now, offering to come back in an informal work session and attempt to try to help you understand what they feel are some of the issues with regard to this particular matter. The issues in this matter are fairly complex and would be happy to go through them in an abbreviated fashion in the time I have right now. (Handed out a photograph to help the Commissioners better understand the layout he is talking about.)

Jack Lynch said the rules are that there wasn't to be anything presented at this time. The reason was they wanted to give everyone an opportunity to study and take into consideration what was presented so there wouldn't be something presented at this hearing that the other side didn't know about. **Chairman Walker** asked Lorenzetti if his map was dissimilar from the map the

Commission has. **Becky Engstrom**, FWP Legal Counsel, said there is a map in the record at page 28. There is a map of the proposal and also an NRIS map that might do the same thing.

Lorenzetti said the map doesn't do the same thing because the aerial photograph he wants you to see shows where the fishing access is closed right now. It is closed at the Madison Road, a long ways away from the infected area. This is a photograph. This issue comes down to whether the agency is responsible to the entire public and not just to users of the access with regard to this issue. For this particular appeal, the issue it turns on is whether the agency feels they are making this decision in the best interests of all the public rather than just the people who use this particular access.

Contend the best way to prevent the spread of the New Zealand mud snail into the Madison River is to keep the access temporarily closed at the road. Looking at the photograph, letter A is where the Madison Road intersects the beginning of the fishing access. That is where the access is now closed. What FWP wants to do at approximately where C is on this photograph is where they wish to build a footbridge bringing people closer to the problem with their solution. That is approximately the area where infestation of the New Zealand mud snail is. Where D is the river begins. You can see how much closer FWP wants to bring the public to this particular problem. They think that will facilitate the spreading of the New Zealand mud snail into the Madison River directly. They do not know for sure if the New Zealand mud snail is in the river right now. FWP has never done studies and from what they know, it is not now in the Madison River. Want to keep it out of this part of the river. Feel the way to keep it out of the Madison River is to keep people as far away from this access as possible until a permanent solution has been found, until a treatment plan has been found to eradicate the snails in this part of the ditch, or until they have discovered a way to take those snails out of the ditch.

The complete research has not been done on this particular issue. Talk regularly with a FWP researcher on this matter and also the head biologist of Yellowstone National Park where they have this problem too, and they inform him the complete research about the problem here is not done. They are waiting for the science to be done before they make their decision about how to deal with this issue.

For the past year and a half the agency has chosen to keep the access closed at point A. Even that closure has been very poorly enforced by FWP. The R on the photograph is where they live. The agency wants the Commission to approve the building of a footbridge and bring people closer to the problem. For the last year or so in which the access has been closed, they have seen people taking the barrier apart and going down the access road. On numerous occasions they have seen individuals, County workers and even private companies like PPL Montana breach the barricade and access that infested area. At least these violations took place in public view. When they happened, they could see them, report them to FWP and hopefully they could do something about them. By opening the access and putting people down close to the access, they can't see that area. Since FWP does not want to put somebody down there to make sure people don't violate the rules, step into the irrigation ditch and spread the snails into the river, there is no way to police what people are doing at that part of the access. If it remains closed at the road, they can catch the violators and make sure no one is going back there for that purpose.

Last summer on more than one occasion, cattle from a ranch across the Madison River were in the closed access site. They reported it to FWP virtually every time they saw it. Sometimes it took them up to a week to get there to get the cattle out of the site. They have never found a permanent solution to that problem. While they went through the process of closing the access road at A and keeping the public out of there, they never did anything to fence off cattle from coming across the river at low water time and getting into the access. A simple electric fence would have done the job. To this day, there is nothing to prevent cattle from coming into that access site, grazing on that property and essentially carrying the mud snail back into the river as they go back across to their property.

Can't understand how that site has been managed in that way. Why attempt to close it at the road if you're going to allow cattle to be in there on an almost constant basis. Complained about that but there has never been a permanent solution. If the agency can't control unwanted cattle in a closed fishing access site, how can they control the users of this footbridge from entering there? So they're saying they're going to construct a footbridge and open it up, but they can't even control it when it's closed. FWP promises they will do a better job of enforcement at the site, but admits in the documents you have in front of you that they don't have enough money to do the job. They say they will be there to make sure people don't step in the irrigation ditch but turn around and say they can only go so far because they don't have the resources to do it. For a good five years they have asked the agency to allocate more money for maintenance and enforcement of this site and other existing fishing sites. They've been told there's no money available to hire more game wardens or to replace destroyed access signage.

About a year and a half ago before this site was temporarily closed, someone came into the Cobblestone access and burned every piece of signage in the site. Most of that signage still has not been replaced. There has never been any signage with relation to the New Zealand mud snail problem. FWP knew for years that the New Zealand mud snail existed upriver on the Madison River in Yellowstone National Park. I don't ever remember seeing any signage in our access instructing fishermen or hunters to be aware of the problem, to make sure that they didn't carry it into our portion of the river. Now it is already done.

Have had numerous conversations with the agency's managers with regard to vandalism at the fishing access sites, and one of the agency's own managers indicated that vandalism is at epidemic proportions. He doesn't have enough money in his budget to replace and repair the facilities that have been damaged. Feel that, as a result, causes misuse at some of these sites and the vandalism ends up getting much worse. Recently, an agency enforcement manager told them the agency has the same level of game warden enforcement that it did in the 1950s. Essentially, there are not enough people to make sure people are following the rules at these sites. They understand that, but now FWP wants to build a footbridge to put people closer to a situation where they feel it needs to be strictly enforced or they will end up with the mud snail in the Madison River. What gives the Commission the belief the agency will do a better job of enforcement and maintenance at Cobblestone than they have done in the past?

In the past they've had a variety of problems at that site and through this process they have had all kinds of comments from FWP about the nature of this particular footbridge that they are proposing. Originally it was supposed to be a footbridge. It started out as being a three-foot wide footbridge, and then it went to five feet wide, and then it went to seven feet wide, and now it's back to three feet wide or five feet wide. Originally in the documents the footbridge was supposed to be temporary. But FWP cannot tell them what temporary actually means? Does temporary mean they will take it back out at some future date? Well, maybe, but they are not telling him what date that would be. That sounds like a permanent fixture. Originally it was supposed to be built with wood piers and now it's going to be built with concrete piers. Concrete seems rather permanent. If this is a permanent fixture, the agency did not get approval from the appropriate state and federal agencies permitting a permanent structure. There is a difference between making a permanent change to a fishing access site and making a temporary change to a fishing access site.

Believe this particular permanent change to a fishing access site requires more than an environmental assessment. When you make a permanent change like that, in most cases, people get an environmental impact statement at least. Ask that you, as the Commission, investigate the matter. If you feel that an environmental impact statement is necessary because the bridge that they are suggesting is permanent, they should do that and they should also re-seek the opinions of the appropriate state and federal permitting agencies. Know they have talked with the Army Corps of Engineers about this bridge because there is a dike there, and have talked to the local dike and drain board about it, but they have not talked to either one of them about what would be a permanent bridge.

Asking that you do three things: 1) Uphold their appeal on several grounds. One is because they think there have been lots of due process problems here. They think the rules have been changed, they have received a lot of misinformation, and they have genuine concerns about this footbridge and how the use of this footbridge is actually going to be enforced. It's not just a matter that if the use of this footbridge is not enforced, they will be able to go there and give somebody a citation. If the use of this footbridge is not strictly enforced, they have a serious problem. They are going to spread this into the Madison River if it is not strictly enforced. They have told them they can't do that.

The other thing to point out is when considering this appeal, which just boggles their minds as residents, is that there are viable access alternatives. It's not like they are saying to the public, "You can't fish along the Madison River." Six miles up the road FWP has Greycliff, which is a very nice FAS with a boat ramp. For the period of time they have had a problem at this access site, which they are attempting to work with the agency to resolve, either by the application of pesticides or by doing the science, can't this access site be closed temporarily until the problem is solved? Six miles up the road is another. They also have one close to Three Forks, which is not more than seven miles down the road in the other direction. It's not as though the public does not have viable alternatives.

What they have heard through the grapevine is that lots of organizations with vested interests have made property improvements on this part of the ditch and they want access. So they are

complaining to the department and to the Director stridently about the fact that this access has been closed because they have spent money improving it. Even people who have signed up for this appeal, like the Greater Yellowstone Coalition, told him confidentially they didn't want to buck FWP on this because they were afraid they would lose membership. Not because they didn't believe the issue was right or they didn't believe building the bridge would bring the mud snail into the river, but they believed they would lose membership of the hunting and fishing public. That's what it comes down to for them.

FWP said to them they are attempting to balance things when making this decision. In the title of the agency it is fish, wildlife and parks. It is not hunters' and fishermen's association, it is fish, wildlife and parks. They feel the first responsibility of this agency ought to be to protect the Madison River, not necessarily to open a fishing access when a known problem exists. They are asking you to uphold this particular appeal they have and reopen this to public comment. If you don't want to do this, alternatively they are asking that you at least instruct this agency to treat this matter as a contested case. They have refused to do so. They have asked for this to be treated as a contested case under Montana Administrative Procedures Act.

Jack Lynch said, according to the rules, Mr. Lorenzetti had half an hour and he has been up for a half hour. **Lorenzetti** said that is all he had to say. If you will take note of the fact they have requested this be treated as a contested case and they have said they would not. Feel that would be an appropriate way to handle it without forcing them to spend large amounts of money to hire counsel in this matter. A contested case would give them the opportunity to arbitrate this matter, which they believe would be healthy.

Becky Engstrom, FWP Legal Counsel. Here to represent the Director's Office decision in this issue. The only issue before the Commission today is whether to uphold the decision by the Director's Office to construct a footbridge across the ditch that accesses the Cobblestone Fishing Access Site. Some other issues have come up this morning and would be happy to address those if you will ask the questions, but for time sake and for sake of limiting this to the issue we came here for, will limit comments and discussion to the footbridge.

Pat Flowers issued a Record of Decision on this on July 27, 2001. Pursuant to that Record of Decision, which provided an appeal procedure allowed to members of the public who might disagree, the Lorenzettis, the Rices and the Brolings timely filed an appeal to the department on this issue. The Lorenzettis have proceeded to date as the spokespeople for Fred and Janet Broling and Leland and Bettye Rice. That is why we're hearing from the Lorenzettis and not the other appellants in this matter. Pursuant to that appeal, an informal meeting was held in Three Forks on November 13, 2001. The Lorenzettis, the Rices and the Brolings reviewed the notes taken during that meeting. We received no comments on them so we proceeded to the Director's Office to discuss this issue. Pursuant to that, the Director's Office issued a decision, which was signed on January 22, 2002. The Lorenzettis then, on behalf of all the appellants, filed an appeal to that Director's Office decision and appealed this to the Commission, and that is where we are now. The Department filed a response to that appeal and provided exhibits. All of these exhibits and documents were provided to the Lorenzettis and the appellants responded to that response.

This began when the region proposed to construct a footbridge across a ditch. There is a map in your record, which shows the proposed footbridge. It's a drawing and it correlates to the picture that Mr. Lorenzetti provided to you. Persons had to drive in to the access, park at the little roundabout, walk via a foot trail across the Darlinton Ditch, as the department calls it, which is in the depiction as a spring creek, and then get to the fishing access site. The concern raised by the department during the environmental assessment process was while visitors crossed the ditch, there were New Zealand mud snails found in the ditch that would be transferred to the Madison River and the fishing access site once visitors got to the fishing access site. This was the precipitating measure for proposing the footbridge across the Darlinton Ditch. In the depiction can be seen a jack-legged fence that would direct visitors only to the footbridge so they couldn't get into the ditch and cross there. Plus, it is an easier way to get across the ditch to access the fishing access site via footbridge rather than through the ditch. The EA for the footbridge is found in the packet provided to the Commissioners as well as the rationale for the footbridge.

Basically, the New Zealand mud snails cause a threat by displacing food sources in the river. They have already been found in the Madison River as close as Norris Bridge, which is just a few miles away. The region, in deciding whether to construct this footbridge, needed to balance some factors. One of the factors is the department does not feel with the information it has now it can eliminate the risk of the New Zealand mud snails, so it must manage that risk instead. This proposal is one way the department has found to manage that risk.

The appeals procedure is what the department has proceeded under since the Lorenzettis filed an appeal from the very beginning on the Record of Decision. Although there have been some timing difficulties because of travel schedules and other things, for the most part we have stayed with the appeals procedure. Included in the appeals procedure is the criteria the Director's Office used to make the decision on this matter. It is the department's position that the Director's Office, in making its decision, complied with all of the standards. There is no basis in overturning the decision.

In reviewing the Lorenzettis' claims and the response, there are similarities in the positions of the Lorenzettis and FWP. One is that, pursuant to comments by the Lorenzettis, the department decided to put up a gate and associated fence to it at the access point. This is shown at letter A of the picture the Lorenzettis provided. At that point the Director's Office decided to have a gate and associated fence, and have someone open and close it at opening and closing times, in order to alleviate some of the concerns expressed by the Lorenzettis. This is shared between the department and the Lorenzettis. They have asked for clarification on the meaning of peak use times. The department submits that is Memorial Day weekend to Labor Day weekend, which is generally the time we see the most use at fishing access sites across the state.

Another agreeing issue with the Lorenzettis is there would be boundary signs put up on the sharing border between the Lorenzetti property and the department property. The right hand jack-leg fence already there is the adjoining property boundary. There are signs there but the region is concerned there may not be enough. The department is willing to put up more signs to insure the public knows, "No trespassing, private property beyond this point." This is also found in the Director's Office decision as direction to the department allowing footbridge construction

to go forward. The Lorenzettis are also favorable to the promise by the department to be a good neighbor, pursuant to our responsibility in the statute to be a good neighbor to fishing access sites. It is still the department's aim to do so although there is some discussion as to whether the department has done that thus far. The department is committed to doing so.

The Lorenzettis favor the decision to inform local wardens of the continuing problems at the site. In the recent past there have been citations issued for trespassing. The department feels it is doing it within resources available and the department will continue to do this. The Lorenzettis have another issue with the mending of the fence. Region 3 is willing to take on the responsibility of maintaining and repairing the adjoining fence. Expect the Lorenzettis will favor that position.

The divergence here is that the Lorenzettis want a temporary closure and it's uncertain whether there would be an end to that temporary closure. That is because these issues are ongoing, they're going to continue and we've seen it at many of our other fishing access sites. All we can do is hope we do the best we can in managing the problem. Where we diverge is we feel the need to open this important fishing access site. The Lorenzettis feel it should remain closed. The site is positioned between two other fishing access sites. One is the Milwaukee Road FAS and the other is the Greycliff FAS. They are 16 miles apart and in the middle is the Cobblestone FAS. The two sites on each side have records of over 100,000 users/year. That includes anglers and waterfowl hunters. This one is probably used close to the same amount because of its proximity to the two fishing access sites.

The region has balanced the fact that this is a popular FAS and gotten comments from many people on when this will open again, not just sports groups, but also neighbors and residents from Three Forks who would like this site opened. There was an issue brought up about New Zealand mud snails already in the Madison River. They have been found as near as Norris. The region finds it can't eliminate the risk of the mud snails getting into the Madison River, but they can manage that risk by providing a footbridge across the ditch that has been found to have New Zealand mud snails in it already and ensure that our public coming to the site does not spread the mud snails into the Madison River in this stretch. They have not yet been found in this stretch. Balancing the factors involved, which are the New Zealand mud snails, popularity of the site, fact they can do something to manage the risk, and the landowner concerns heard to date including the mitigation measures FWP is already committed to implementing, the region has decided to go ahead with construction of the footbridge. We ask that the Commission uphold the region's decision, the Director's Office decision, and allow the footbridge to be constructed across the ditch.

Commissioner Dascher asked why go with a concrete abutment instead of the wood originally talked about. **Engstrom** said in the original EA, a concrete abutment was suggested so it has always been proposed. **Mulligan** asked if it were considered permanent, what would be the impact on the review cycle in accordance with MEPA? **Engstrom** responded that the bridge as it would be constructed would not have any further significant impacts to the environment that have not already been considered in the environmental assessment phase. It is unlikely they will have to go through another EA process. However, the triggering factor for actually removing the

bridge may include a MEPA analysis. It would have further impacts to the human environment because of the removal of concrete abutments into the river. There would likely be MEPA review if it were removed at a later date. **Mulligan** asked if this had been designated as permanent from the front, how would we have proceeded with the review process? **Engstrom** responded that she didn't believe it would have been done any differently. The impacts to the environment come when it's put in and when it's removed, not necessarily while it remains there. All of the environmental assessment that has gone into it thus far covers the impacts the bridge will have at the site. **Mulligan** said he was thinking of the Army Corps of Engineers or other regulations. **Engstrom** said permits would have to be obtained from the Army Corps of Engineers before the footbridge goes in.

Walker, looking at the map and corresponding with the map Mr. Lorenzetti handed out, asked if the Lorenzettis held the property north of the access road to the fishing access site. **Lorenzetti** said, "Yes." **Walker** asked whose property was east and south of the access. **Lorenzetti** said the other appellants, the Brolings, owned it. **Walker** then asked about the property continuing approximately two miles. **Lorenzetti** said there is a 40-acre parcel in the middle. They own 40 acres south of the fishing access site, there is another 40 acres they do not own, and then beyond that they own the property all the way out to where the fishing access site ends to the south. There is an intermediate landowner, who has just become a landowner in that area. They are the ones who probably will be most impacted by the footbridge. **Engstrom** said the hatched portion on the map you are looking at shows the fee simple ownership and we abut that. Ours is a contiguous area. She wasn't aware of any intervening landowner. **Walker** said FWP owns 190 acres and he was concerned about the private ownership to the east of that 190 acres, and west of the county road. **Lorenzetti** said that is owned by the Brolings, between the access and the Madison Road. Directly south of that access are the Brolings, then another person, and then the Brolings again. **Dascher** asked if that was the case, does that property of the third party abut the fishing access site? **Lorenzetti** said "Yes, and their name is Latimore." **Dascher** asked how large the parcel of land was and **Lorenzetti** said the Brolings own the 40 acres on the southern part of the access site, and then the Latimores own 40 acres and then past that the Brolings own 160 acres or so on that side of the road all the way out to the south end of the fishing access site. The Brolings own some on the other side of the road, too.

Lorenzetti said they have approximately 320 acres on the north side of the FAS, a mile along the Madison River and that is their genuine concern. They have constant issues and problems with security at the access site. They have a bridge at point E. People see that bridge from the FAS, cut their fences, cut across and use their bridge. They're repairing that bridge and not sure they want to repair it because if they create a better bridge for their own access, they're also causing the public to have better access.

Larry Michnevich said he was chairman of Trout Unlimited habitat committee when they improved the Darlinton Ditch. The ditch was created when they built the dike. The dike was created to retain ice on the river side so the valley would not flood. The ditch was shallow in the beginning until TU came in and improved it with meanders, pools and riffles. It is a tremendous fishing opportunity and resource. There are no viable options upstream or downstream. This site is unique in that it is the only spring creek in the area open to the public without a rod fee.

That is because of what was done by TU and volunteers to improve Darlinton Ditch. The access was open when people bought property there so they knew what they were buying. **Lorenzetti** said that is not true. **Michnevich** said people were going to Lorenzetti's bridge. If FWP constructed their bridge, there wouldn't be the incentive to use Lorenzetti's bridge.

Lorenzetti said he was told specifically by FWP there was to be no public comment or else they would have brought representatives to talk to the Commission. They would have brought quite a number of residents for the Commission to listen to. **Walker** said they are trying to do the best they can. Understands Mr. Lorenzetti's position and will try to make his decision (other four Commissioners will make their own) based upon what he thinks is best for the resource and the fishing opportunity. If Mr. Lorenzetti wishes to spend his time attacking, that's fine, but it doesn't do his position a lot of good. **Lorenzetti** said he is not too concerned that it doesn't do his position a lot of good. This is not about the Lorenzettis or the Rices. This is about the Madison River, it is not about his position. It is about what they feel is best for the river. Saying that he knew when they purchased this property the fishing access site was there is absolutely not true. His wife's family has owned that property since the early 1900s. They are not new in the valley. Her great grandmother's ranch was the ranch that was eventually deeded to Gordon Darlinton, who eventually sold that property to FWP, unbeknownst to members of their family. They have a genuine concern about the health of the river. It is about what he feels is protection of the Madison River at all costs.

FWP's talk about managing the risk is a smokescreen for attempting to evaluate what is a fishing resource and get it back into play. That is not right. At all costs, ought to be protecting the river. To him, reducing risk means keeping people as far away from the problem as possible. Understand this is a valuable FAS and he fishes there himself sometimes. Do understand people wanting back into this site. He would like to be back into this site and knows plenty of people in Three Forks who would like back into this site. But wants it to be done correctly and without compromising the river. Building the footbridge will compromise the health of the Madison River at that point. Norris is a long ways away. Do not want this problem being right at their doorstep. Doesn't do any good putting it right there.

There are prevailing financial forces at work here. People have put a lot of money into this access and they want to see their investment realized. They feel they should have access and he agrees that the public should have access. But feel they should have access when the problem is solved. If it is determined the problem cannot be solved, then need to come to some alternative decision about how to deal with the situation. They will probably be building the footbridge next week and they will reopen the access almost immediately. Predict that within the next few months the New Zealand mud snail will be in the Madison River at that point. Ask that the process be allowed to go on by either upholding their appeal or by asking that this be treated as a contested case and allowing them to work with an independent arbitrator, not someone assigned by the department who can help work out this situation.

Dascher asked why he feels a footbridge would make it worse. **Lorenzetti** said because then the access is opened to the "100,000 people who use it yearly." At present, no one does, except people who violate at the road and an occasional person who is down in the area of the

infestation. The footbridge will not keep people out of the ditch. Nothing will keep people from being in the Darlinton Ditch except strict enforcement or ameliorating that by keeping them far away from the access at the road. The footbridge is not a viable solution. It may keep out some people, but not all because people don't follow the rules down there. The footbridge doesn't speak to the health of the Madison River. All the footbridge does is allow FWP to open the fishing access site.

Murphy asked if it were not for the snail, would you oppose the bridge? **Lorenzetti** said not necessarily. He is opposed to the bridge for the purpose of allowing the access to reopen with the problem as it exists. Does not oppose the bridge for the public's facility to use the site in an appropriate manner. The issue is not the bridge and the issue is not them. The issue is the health of the river. **Murphy** asked how far to where the snail first appears in the river. **Pat Flowers**, Region 1 Supervisor, said about 12 to 15 miles. **Lorenzetti** said it is 12 miles to Black's Ford, which is on the Norris Road. The Norris Bridge is a considerable distance from that. **Flowers** said that is not correct. It is 7 or 8 miles to Greycliff and then upstream to Norris. Don't have a map so it is hearsay at this point. It's anywhere from 10-15 miles. **Lorenzetti** asked where the Norris Bridge was. Is it at Black's Ford? **Flowers** said, "No, it's on upstream." **Lorenzetti** said there's a sign right on the Norris Road that says it's 12 miles to the Cobblestone FAS that has been put up by FWP. So it's at least another 5, 6 or 7 miles to the Norris Bridge. It's about 20 miles away. **Murphy** said that he meant river miles. **Lorenzetti** said the road follows the river so it's at least 20 or so miles away upstream if it is in fact at Norris. It's quite a distance away and they think it would be very unfortunate if all of a sudden it was in the headwaters area. It can cause some significant consequences if we facilitate its introduction into the Madison River at that point. Recognize this is a valuable fishing resource but the river is more valuable.

Walker said in talking about concerns with poisoning the ditch because cattle were using the ditch, can we assume you're grazing your 320 acres? **Lorenzetti** said "Yes." **Walker** asked if he was diverting water out of the ditch for the cattle or do they have access to the ditch? **Lorenzetti** said they have access to the ditch, as they do along the entire length of the ditch. The next ranch over, the Wilcoxes, their cattle have access to the ditch. In the past they have diverted water out of the ditch for irrigation purposes for alfalfa, but no longer do so on their property. A lot of people in that area do. **Walker** then asked if those same cattle could cross the ditch, graze on the other side and get in the river. **Lorenzetti** said, "yes," and people whose cattle are on the other side of the river can come across on that side, too. They have put up a fence along their side of the river to keep their cattle from coming over to that area. **Walker** asked if they were getting on the access as well as **Lorenzetti's** property. **Lorenzetti** said, "Yes, they were." By range law they're required to fence them out, but under the circumstances FWP perhaps had a conversation with the landowner and said to try to keep their cattle on this side so they don't get into the infected FAS. Don't really know what those conversations were about.

Lorenzetti said Becky Engstrom talked about a number of things FWP has agreed to do for them and they genuinely appreciate those things with regard to enforcing the fences, putting up a gate, and stuff. They've been asking for those things for many years and they're great things, but it is not about the **Lorenzettis**. It's about the river. The issue about the molluscicide he can't talk about because that's not appealable. There is no discussion about that. FWP has made their

decision, they're going to use this molluscicide and they're going to employ an out-of-state company this year to put that molluscicide in the irrigation ditch, which has pretty significant legal consequences because there's been a recent case in this district.

Murphy asked from a biological standpoint, what is the chance cattle or even deer will spread the snails to the river? **Flowers** said it is a definite possibility and they recognized that from the outset, even though they were going to do the fencing, in addition to the bridge, to keep the public, hopefully cattle, and most critters out of there. They're putting up a five-wire fence for about 400 yards in the area of infestation. They also recognize if a deer wanted to jump the fence or come in through the jack-leg fence which only goes across the creek, that is certainly possible. That is why his characterization of this all along is as a risk management situation. Short of putting up 10-foot walls, critters are going to be in and out of there. **Dascher** asked if the Lorenzetti cattle cross the ditch and go across to the river. **Lorenzetti** said theirs cross the ditch and graze in the bottomland by the river, but theirs don't cross the river. **Dascher** said if they cross the ditch, graze in the little peninsula and go to the river to drink, there is just as much possibility of transporting the snail that way as do any of the others. **Lorenzetti** said, "Absolutely." To his knowledge, the New Zealand mud snail has not been found in their area of the ditch. They have always asked the researchers when they are down there whether they have found the New Zealand mud snail in their portion of the spring creek. If he knew there was a risk there, they would not allow that to happen. If they knew, they would certainly take steps to make sure any cattle grazing on their property did not access the river. They don't want to contribute to the problem.

Mulligan asked how rapidly the snails spread. Will they spread any slower in that ditch downstream/upstream vs. the river? **Flowers** said it isn't known how quickly they spread. They started in the Snake River in Idaho, showed up in the Firehole in the park, and then on the stretch of the Madison River below Hebgen. They are now down to Reynolds Pass Bridge. They have shown up at Norris, presumably by someone introducing them on boots, a boat, or something like that rather than traveling downstream via the water.

Mulligan said in an ideal world they would build a cage with total containment around this contamination here, at Yellowstone, at Norris and keep them from spreading, but it doesn't sound like they can do that. There are deer, coyotes, ducks, beaver and all kinds of things, including people, which could be carriers. If a way isn't found to control them, they will probably go up and down this ditch. Is it a reasonable assumption they will spread up and down the Darlinton Ditch? **Flowers** said that is a reasonable assumption. Based on their bioassays, if they could kill the snails they could eradicate most of them, though not all. With what they have seen so far, they can stem the tide but not reverse it. If it happens, it would be through some sort of natural regulation, not steps they take. Again, that is why they view this as an attempt to limit the spread as much as they think is reasonable given the costs of that effort.

Murphy asked the length of the ditch where they have found them. **Bruce Rich**, Region 3 Fisheries Manager, said about 400 yards. It is several hundred yards in the FWP site and down the ditch to the Lorenzetti property, about to that bridge. He said there is confusion about whether they are in the ditch outside the site. There are two ditches there and the bottom one is

across on our access road this side of the Darlinton Ditch. There is a spring creek there also and that is the place where they have not been found. **Lorenzetti** said that is on private property and they are worried whether they will end up in those spring creeks. **Walker** asked if they were found north of the access site in Darlinton Ditch. **Rich** said that is correct. Have found one individual about a mile and a half downstream where the river road is adjacent to the ditch.

Mulligan said if we could control the snails by quarantining the areas where they are, would be adamant that be done, but it is clear they cannot. Appreciates Mr. Lorenzetti's concern and it is obvious he'd like to do the same, but it's not realistic. Putting in a bridge poses no greater risk than deer, beaver and coyotes spreading the snails. As a Commissioner, it is offensive being characterized as responding to money interests. Clearly our responsibility is to provide opportunities for sportsmen. It is in the statutes and mission statement. It is not responding to money, it is meeting their obligation. Providing that bridge and opening that site meets that obligation. If the department could tell him they could contain it within the site and other areas so it does not spread, even if it means shutting down sections of the Madison River, would support it.

Linda Rice Lorenzetti said biologists from MSU come to their property and they stay with them as they are doing their research. They said the snails came to the ditch with fishermen who had it on their boots and introduced it into the ditch. You have to walk to the ditch now to get to the river. Don't know if it is on their property. If it is known they exist in an area, you open that area and allow more people into that area, you're not talking about a few cattle, deer or wild animals in that area. You're talking about a lot more traffic and a lot more possibility of another fisherperson or dog or child picking it up and taking it into the river. Talking about the ratio of risk. **Mulligan** said putting up a bridge, fencing the area, signing the area and improved enforcement, there will be more wild critters in and out of that ditch than unwild critters. As such, the risk at that time will be lower from the people than if there are no people. Obviously, if there were 100,000 people walking through that ditch, that would not be the case. Which is exactly why the department wants to put the bridge in. The department closed this site because of the concern.

Mrs. Lorenzetti said we're talking about enforcement and the ability to enforce. As residents next to the site, about 90% of the people use the site very respectfully. Then there are the few who do not pay attention to signs, rules, or respect for other people, and do what they want to do. Those are the people they are concerned about. Her grandfather always let anybody have access. Before the fishing site existed, her family owned all of the property along the river they're talking about. Her relatives always allowed anybody access to the river. She still believes that's the way it should be; it's anybody's river. It's not their river but they all have to take care of that river.

Mulligan said there are differences of opinions on the risk. The risk is worth taking on opening that site with the bridge. Choose not to get involved with all the other stuff gunnysacked together on the department's performance and where we are on the social issues on that site. It boils down strictly to a risk.

ACTION: *Commissioner Tim Mulligan moved to deny the appeal in the matter of the Cobblestone Fishing Access Site. Commissioner John Lane seconded the motion. Motion passed unanimously.*

Jack Lynch said it is important that the Commission have the decision in writing. Propose that a decision be drafted along the lines of Commissioner Mulligan's motion, presented to the commissioners for their approval, and ultimately issue a written opinion. **Walker** said to prepare that but very simply deal with the issue. The other issues that were brought forward need not be a part of that. Voted simply on the issue before us. **Mulligan** said the other issues that came up he wants to talk to the region about. If it looks like this will be a permanent bridge because of the inability to treat the snails, need to make sure all the permits, etc., are done legally and procedurally. We have no choice in that; it's law. Need to replace the signs. The constant issues faced with social aspects of fishing access sites need to be addressed.

8. WMA Grazing Leases - Final. Don Childress - One is for Ear Mountain and is a renewal for two years of a grazing lease with the Salmond Ranch. The 2002 grazing lease is \$14.90 per AUM with a maximum of 391 AUMs for the two years. The amount of money is the reason for coming before the Commission. **Murphy** asked what the rate was before. **Childress** said this is the commercial rate; it was \$16 before and changes each year. **Dascher** asked how it was restructured? **Childress** said there was damage on woody vegetation and is a timing and intensity issue. To Commissioner Dascher's question if it has always been in a rest/rotation system, **Childress** responded that the system has been variable as far as pastures because. Not all the pastures are on FWP land so the process has adjusted that. **Dascher** asked if they are reevaluating the grazing system and if they will still graze it. **Childress** said it's a work-in-progress and they would re-evaluate it. There is value in grazing if they can get the system to work. **Dascher** asked if cattle are totally to blame for damage to the vegetation. **Childress** said not necessarily. They're trying to evaluate when it occurs and make the adjustments. **Dascher** suggested it might be something in the winter doing it. **Childress** said that is why they are looking at it to be sure. If it was just cows, would have removed them. **Murphy** asked how they determined it was woody damage. **Childress** said they have several people who have worked in range management and there is a book about woody damage. They can assess when it occurs, how it occurs and what species is part of it. The impact on vegetation depends on when it occurs. Their objective is to bring vigor back to the plants along the riparian areas. **Murphy** said in his area the elk take out more trees than cows do. **Childress** said they're talking about the browse species associated with mule deer, and trees are not a big part of it.

Childress said the next three leases are at the Mt. Haggin WMA. Mt. Haggin is mostly summer range and livestock has been part of it since they acquired the WMA. The leases are for two renewals and one new one. FWP has made major changes to the grazing system on Mt. Haggin largely due to the escalating maintenance costs. Fence costs are high and the new system is less fence intensive. The system now incorporates a Forest Service allotment.

The first lease is a renewal at Willow Glen Ranch. The lease is for three years and allows FWP and landowner time to see if the new system is working as anticipated. The grazing rate for 2002

is a DNRC rate of \$6.20 per AUM. The reason for the DNRC rate is the lessee will do all needed fence maintenance and handle all trespass livestock, whether his own or others.

Next is a renewal with Peterson Fairmont Ranch. It is a three-year lease and allows FWP and the landowner time to see if new system is working as anticipated. Grazing rate for 2002 is DNRC rate of \$6.20. The reason for the DNRC rate is the lessee will do all needed fence maintenance and handle all trespass livestock, whether his own or others.

The third one is a new lease with Donald Thompson, Bert Bacon and Phil Ralston incorporating USFS ground into the grazing system. It reduces fence maintenance cost, which is the reason for this new lease. The lease is for three years and the grazing rate for 2002 is DNRC rate of \$6.20. The reason for the DNRC rate is the lessee will do all needed fence maintenance and handle all trespass livestock, whether his own or others.

Mulligan said he toured this area last summer with Craig Fager, FWP wildlife biologist, and it makes a lot of sense. Fencing has been a big problem. Biologists are spending time working on fences and trying to build fence instead of doing what we need biologists to do. Not having the resources to do it has created internal friction as well as taken away from what we want the biologists to do. The changes are worthwhile.

ACTION: *Mulligan moved approval of renewal of grazing lease on Ear Mountain WMA, renewal of two grazing leases on Mt. Haggin WMA, and new grazing lease on Mt. Haggin WMA. Murphy seconded the motion. Motion passed.*

9. Jefferson River Turkey Transplant, Region 3 - Final. **Don Childress** said before you is a decision notice to trap Merriam's turkeys from other wild populations in Montana and transplant a minimum of 20 birds along the Jefferson/Beaverhead Rivers in each of two locations. Turkeys have been transplanted in the area before but further downstream. An EA was drafted, 20-day public comment period on the EA conducted through March 20, 2002, and legal notices placed in area newspapers. No significant issues were generated during the public comment period and no revisions made to the draft EA, which serves as the final EA. Hence, they want to go forward with the transplant, which will take place next winter. **Mulligan** asked if the sections where the transplant takes place would be identified and closed. **Childress** said that in the past it has been easy to identify those and notify people they are closed because in Region 3 they operate under the permit system. **J. Lane** asked if there was a season there now. **Childress** said it's all by permit in Region 3 so there are identified areas that have turkeys. **Hagener** asked if they were taking advantage of the Wild Turkey Federation superfund. **Childress** said, "Yes, they do." The Turkey Federation has bought new trap mechanisms, cannon nets, for them to use, primarily in the southeast where they have done most of the turkey trapping. They have provided turkey boxes for transplants. **Mulligan** said they have an active chapter centered in Whitehall. **Hagener** said he has been impressed with the organization overall and nationwide. They put a substantial amount of money into assisting state agencies as far as turkey management.

ACTION: *Mulligan moved to approve transplanting turkeys to the Beaverhead/Jefferson Rivers area as proposed by Region 3; Murphy seconded. Motion passed.*

10. Reissue Non-resident Deer Combination Licenses - Final. **Don Childress** said when nonresidents apply for a big game combination license, they can choose to separate the deer license out and apply for an elk combination license only. This year there were 1,964 deer licenses separated in this way.

The Commission's Annual Rule for combination licenses, adopted in November 2001, defines the process for reissuing these deer licenses among the general, landowner and outfitter categories. In the past, reissuance has most often occurred in the landowner category; however, last year some were also allocated to the general category. None have been allocated to the outfitter deer category because the target quota has either already been reached or has been in the process of being reached.

Hagener said they are reissued to unsuccessful applicants. It's not open to anyone in the nonresident category. **Nancy Kraft**, License Bureau Chief, said of the outfitter sponsored they have about 300 big game and 370 deer available. Those are being sold on first come, first served basis. **Murphy** asked if they are sold at the same price. **Childress** said, "Yes." **Walker** asked if they had reissuance in past years for a variety of reasons like illness, etc. **Kraft** said, "Yes." **Walker** asked where they were with licenses that are available? **Kraft** said they haven't received a lot of requests for these licenses. **Dascher** asked if the licenses have been moving since the deadline. **Kraft** said they've sold about 50 of the deer and 70-80 of the big game. They continue to trickle in. Last year it was the middle of August before selling the deer that were available. **Murphy** asked how the numbers compare with last year. **Kraft** said the General Licenses are up a little bit from last year. They sold 606 of the reissued deer last year. They sold about 70 of the general landowner, so fairly consistent. **Murphy** asked if the 606 and 70 from last year, did those actually all sell out or were there more available that could have been purchased? **Kraft** said there were 606 General Licenses available and all of those sold out. There were just a few more available of the Landowner than what they actually sold. Generally they get almost 100% response.

ACTION: ***J. Lane** moved to reissue 71 separated deer licenses to nonresidents in the Landowner-sponsored category, and 786 separated deer licenses to nonresidents in the General category. **Murphy** seconded. **Motion passed.***

J. Lane asked about members of the military who are successful in drawing a permit and then are deployed. Is there some way of giving them another chance or refunding their money? **Kraft** said there is the option of refunding their money, which is in the refund rules. As far as reissuance or giving preference on a permit, they don't have the authority to do that. **Hagener** said they do have the ability in most cases to refund 100% and they did that last year with some of the people directly affected by September 11. **Mulligan** said an individual wrote and asked if he could have his draw switched to this year, and they made the determination they don't have the latitude to do that.

11. Greenhorn Sheep Transplant MOU, Region 3 - Final. **Pat Flowers**, Region 3 Supervisor, said they are asking for final approval to reintroduce 20 to 40 bighorn sheep for two

consecutive years in the Greenhorn Mountains of southwest Montana. Indicated on a map the release sites at the confluence of the forks of Greenhorn Creek on either private, BLM or DNRC lands. All approved the release on their property. Bighorn sheep are native to the area. With the reintroduction, they hope to provide huntable and watchable wildlife, plus biodiversity of the region. Expect reintroduction to occur next winter.

The fundamental issue is concern the release site is too close to domestic sheep allotments on federal and private lands. There is concern over potential breeding of domestic ewes by bighorn rams, and for disease transmission. There is also concern by local sheep producers that reintroducing wild sheep may influence their opportunity to renew grazing allotments. Out of discussion at the last Commission meeting came a proposal to develop a Memorandum of Understanding (MOU) between FWP, sheep producers in the area, Forest Service and BLM. That went through a series of drafts between Mr. Helle, Forest Service, and FWP addressing everyone's concerns. They ended with an agreement in principle, an MOU, which was sent to the Commissioners. It was not signed prior to the Commission decision because it did not seem timely, and they wanted to be sure any comment came before it was signed.

The MOU allows for continued sheep grazing on public land allotments, and commits FWP to issuing an annual kill permit for bighorn sheep that will allow sheep producers to protect their domestic sheep and bighorn sheep from incidental contact. Another partner who arose from this process is Foundation for North American Wild Sheep (FNAWS). They agreed to provide a satellite phone to FWP that would be given to Mr. Helle and his herders. The satellite phone can be used no matter where they are to contact FWP wardens or biologists to go there if any wild sheep are in proximity to the domestic sheep.

Recommend the reintroduction go forward as set forth in EA, with the addition of the MOU. This is within the goals of FWP, which are to conserve and enhance terrestrial ecosystems and diversities of species that inhabit those. Original intent was to balance interests of the agricultural community and their ongoing financial interests in the area, as well as reestablish bighorn sheep in their native habitat, and better meet FWP goals for managing wildlife in the area. **Walker** asked what it would look like to superimpose one map on the larger map. **Bob Brannon**, FWP Wildlife Biologist, showed the reintroduction site on the larger map. Indicated the natural barrier between the bighorns and domestic sheep. **Hagener** asked about releasing them further into the area. **Brannon** said that's where the winter range is, and where they would probably end up anyway.

Joe Helle, representing Rebish and Helle partnership as well as Rebish and Konen partnership, said they are the two ranches with sheep in the area. They have no objection to the reintroduction of bighorn sheep into the Greenhorn area. Their concern is intermingling of bighorns with their domestic sheep. If the bighorn sheep stay in the Greenhorns, there is no problem. FWP people assured them their intent was to keep the sheep in the Greenhorn area. If they come near their domestic sheep, need ability to prevent them from intermingling as their concern is interbreeding. They don't like the idea of killing them, but must protect their sheep. They will support the agreement, sign off on it, and hope it is a successful reintroduction.

Helle also mentioned that there wasn't much about the wolf situation in the plan. Bighorn sheep will be vulnerable. They lost some of their sheep to three packs of wolves in the area last year and many of those losses were rams, which the wolves seem to prefer. FWP may have to consider possible loss of the entire herd to wolves. Passed out his statement with concerns about the wolves. Presented their testimony on the wolf issue to FWP, to the Congressional delegation and the Governor. **Walker** thanked Joe Helle for his pledge of support for the reintroduction.

***ACTION:** Mulligan moved approval of the department's reintroduction of bighorn sheep into the Greenhorn Mountains; Dascher seconded. Motion passed.*

12. Moose, Sheep and Goat Quotas – Tentative. **Glenn Erickson**, Wildlife Management Bureau Chief, said tentative changes in the regulations are:

MOOSE

Moose, Region 1:

HD 105 increase moose permits from 15 to 20 for either sex
HD 122 increase moose permits from 2 to 6 for either sex

***ACTION:** Murphy moved approval of the recommended changes in quotas for Region 1 moose; Lane seconded. Motion passed.*

Moose, Region 2: No recommended changes.

***ACTION:** Murphy moved approval of the recommended quotas without change from last year for Region 2 moose; Lane seconded. Motion passed.*

Moose, Region 3:

HD 300 increase antlered bull permits from 5 to 6 and antlerless permits from 10 to 13
HD 306 decrease antlered bull permits from 7 to 3
HD 310 decrease antlered bull permits from 5 to 1
HD 313 decrease antlered bull permits from 15 to 5
HD 323-20 decrease antlered bull permits from 10 to 8
HD 323-10 increase antlerless permits from 15 to 19
HD 323-00 decrease either sex permits from 10 to 8

Dascher asked about hunting districts 306, 310 and 313 where there have been substantial cuts in the tentative quotas already. In reading the justifications as to why, should they go lower? **Joel Peterson**, Region 3 Wildlife Manager, said it is definitely warranted to have this reduction but it's probably significant enough at this time. Feel comfortable where it is now and is probably far enough. They need more information and part of the study going on with university students may produce it. Will watch this closely. Rely a lot on what hunters see and that may help them decide if they want to make further cuts. **Mulligan** said they made significant cuts for the antlerless in the past for this area. **Peterson** said from the standpoint of harvest, it shouldn't be a problem just taking bull moose. If the numbers go down further, it's something other than

harvest and hate to single out harvest as being the only culprit here. Would like the information on number of animals people see compared to the raw data. **Dascher** said it is a serious cut and she is concerned about this area. **Peterson** said they are, too. Hopefully, they won't just focus on elk with the ongoing study, and will be watching moose, too. **Murphy** asked which of the areas had the wolf pack? **Peterson** said it was 306 and 310. **Murphy** also asked how much grizzly bears were a factor in all three areas. **Peterson** said grizzlies are present in all three areas, are expanding in the areas and could have some impact. There is wolf activity in 313, but didn't think there were established packs there.

ACTION: ***Mulligan** moved approval of the recommended changes in quotas for Region 3 moose; **Murphy** seconded. Motion passed.*

Moose, Region 4: No recommended changes.

ACTION: ***Lane** moved approval of the recommended quotas without change from last year for Region 4 moose; **Mulligan** seconded. Motion passed.*

Moose, Region 5:

HD 516 decrease antlered bull permits from 5 to 3

ACTION: ***Mulligan** moved approval of the recommended change in quotas for Region 5 moose; **Walker** seconded. Motion passed.*

SHEEP

Erickson said when HD 301 closed last year there was concern about hunters shifting to other areas. From harvest information, it does not appear that happened. Lost about 137 hunters as a result of that closure. In 2000, HD 301 had 82 hunters and in 2001 they had 87. In HD 303 they had 35 versus 33 hunters, and in HD 300 they had 21 versus 24.

Over the years have had more licenses for sheep, but most for ewes. In recent years have gone more to transplants so have reduced the ewe take. Their harvest levels and licenses available have dropped considerably. Last year 110 rams were taken and 34 ewes, and last year they had 156 limited licenses. The proposal this year will change that to about 172. The trend is back up on sheep numbers and sheep harvest. **Mulligan** asked where sheep might be coming from next year for the Greenhorn transplant. **Erickson** said they don't know and it depends on the harvest and survival rate. Most of the permits for ewes are low. That shouldn't have an impact. Potential is for Rock Creek, Thompson Falls, Sun River and the Breaks. Have a fairly high ewe quota in the Breaks so it's less likely they will transplant out of there. However, that population is doing very well. They're at the highest numbers they've recorded and production and survival are very good. Don't expect that to deter them from taking sheep from there as long as those conditions continue. Shouldn't pose a problem.

Sheep, Region 1:

HD 122 decrease adult ewe permits from 5 to 2

ACTION: *Murphy* moved approval of the recommended change in quotas for Region 1 sheep; *Lane* seconded.

Mary Ellen Schnur, Montana Outfitters and Guides Assoc., Townsend, asked if they have spring sheep counts for Region 1. Two men saw 38 legal rams in HD 124 outside the reservation less than two weeks ago. That certainly wasn't all the sheep that were there. Is six either sex rams sufficient for that population? **Jim Williams**, Region 1 Wildlife Manager, said he assumed she was talking about the Permit Paradise herd in HD 124. The reduction would be in the cutoff herd, 122. The Permit Paradise herd is doing very well. The difficulty there is the sheep are on and off the reservation. Distribution could pose a problem if increase the permits. The tribes do issue limited entry bighorn sheep hunting by permits for tribal members only. Then FWP has their permits off the reservation. **Murphy** asked if knew how many permits the tribe issues. **Williams** said he did not know but would find out. **Mulligan** asked how to coordinate if they do a transplant and take sheep out of there. Williams said that has been a problem in the past. They moved sheep from that herd to the Beartooth WMA and some of the sheep went to the Gates of the Mountains. The tribes are usually very cooperative in not objecting to it. The chopper pilots are good at herding the sheep down. It is an item of discussion with the tribes every time they do it. **Mulligan** suggested they don't want us coming on the reservation chasing them off. **Williams** said, "In the past, no."

Continuation of ACTION on motion for Region 1 sheep tentatives: Motion passed.

Sheep, Region 2: No recommended changes.

ACTION: *Murphy* moved approval of the recommended quotas without change from last year for Region 2 sheep; *Lane* seconded. **Motion passed.**

Sheep, Region 3: No recommended changes.

ACTION: *Mulligan* moved approval of the recommended quotas without change from last year for Region 3 sheep; *Walker* seconded. **Motion passed.**

Sheep, Region 4:

HD 422-00 decrease either sex permits from 10 to 7
HD 422-30 decrease adult ewe permits from 5 to 1
HD 423 decrease adult ewe permits from 2 to 1
HD 424-00 increase either sex permits from 2 to 5
HD 424-30 decrease adult ewe permits from 2 to 1

ACTION: *Lane* moved approval of the recommended change in quotas for Region 4 sheep; *Mulligan* seconded. **Motion passed.**

Sheep, Region 5: No recommended changes.

ACTION: *Walker* moved approval of the recommended quotas without change from last year for Region 5 sheep; **Dascher** seconded. **Motion passed.**

Sheep, Region 6:

HD 622 increase either sex permits from 3 to 4

ACTION: *Dascher* moved approval of the recommended change in quota for Region 6 sheep; **Lane** seconded. **Motion passed.**

Erickson said there are no recommended changes for the unlimited districts in the 300 or 500 districts, so recommend their adoption as tentative.

ACTION: *Mulligan* moved approval of the recommended quotas without change from last year for unlimited licenses in Regions 3 and 5 for 300 and 500 series districts; **Dascher** seconded. **Motion passed.**

Erickson said they are developing a sheep management plan for the coming year. A couple of members of the FNAWS chapter are working with them, and some university contacts. Hope to have it to the Commission in a few months.

Chairman Walker presented Director Hagener with the real one-year pin to mark completion of his first year with Montana Fish, Wildlife & Parks.

Glenn Erickson:

GOATS

Goats, Region 1: No recommended changes.

ACTION: *Murphy* moved approval of the recommended quotas without change from last year for Region 1 goats; **Dascher** seconded. **Motion passed.**

Goats, Region 2: No recommended changes.

ACTION: *Murphy* moved approval of the recommended quotas without change from last year for Region 2 goats; **Dascher** seconded. **Motion passed.**

Goats, Region 3:

HD 312 reduce either sex permits from 12 to 8

ACTION: *Mulligan* moved approval of the department's recommendation of Region 3 quota to reduce either sex goat permits from 12 to 8 in HD 312; **Dascher** seconded.

Murphy asked if these goats migrate into Idaho. **Peterson** said reference was made in the justification to Idaho. Idaho has flown over the goats in common along the Continental Divide and the adjacent hunting district, and noted a downturn in the goat population. Most of the

western part of their region is in a downturn for goats, whereas the eastern part is doing very well. Don't know why. There is probably some movement towards Idaho, but not a lot out of the Pioneers. Had difficulty surveying those goats so relying on hunter observations and harvest information.

*Continuation of **ACTION** on recommended change in quota for Region 3 goats from 12 to 8 either sex permits in HD 312: **Motion passed.***

Goats, Region 4: No changes recommended. **Murphy** asked about HD 451. Boundary was adjusted and more goats added into the population of that district.

ACTION: **Murphy** moved to amend by changing the department's recommended quota from 2 to 4 either sex goats in HD 451. **Walker** seconded.

Graham Taylor, Region 4 Wildlife Manager, said the size of HD 451 was more than doubled earlier in the year, which added a considerable number of new, unhunted goats to the district. Biologically, four permits is an acceptable number and can afford to harvest four in the short term. The sensitivity with goats is the distribution of the harvest. Hunters sometimes have a tendency to go to the easiest goats. Will contact each hunter prior to the season and try to distribute them throughout the region. **Murphy** asked if it made sense to split the district into two with 01 and 02 region. **Taylor** said they could but as they agreed earlier this year with their individual contacts of every goat hunter, they will lay out the picture for them and see if they can do it themselves. If not, will have to revisit that issue. **Mulligan** asked if the goats move back and forth between the areas. **Taylor** said they tend to stay separated, but have to ask where they came from. **Mary Ellen Schnur** said it makes sense to offer four more permits. There are three separate groups of goats there. Hunters will pretty well distribute themselves. **Mulligan** asked if all four were shot from group, would they close it the next year? **Taylor** said would want to see the pattern repeat itself two consecutive years. **Mulligan** said one year wouldn't cause an area to close. **Taylor** said, "No, biologically it won't cause an area to close."

*Continuation of **ACTION** with motion and second to amend by changing the department's recommendation in HD 451 from 2 to 4 either sex goats. **Motion passed.***

ACTION: **Lane** moved for approval of the tentative goat quota proposal for Region 4 with the stated amendment; **Murphy** seconded. **Motion passed.**

Goats, Region 5: No recommended changes.

ACTION: **Walker** moved approval of the recommended quotas without change from last year for Region 5 goats; **Mulligan** seconded. **Motion passed.**

13. Mountain Lion Seasons and Quotas - Tentative. **Erickson** said lions provide a lot of hunting opportunity. Sold about 5,100 resident licenses last year, which is down a little bit. The high was 5,800 three or four years ago. Non-resident licenses have stayed at 420 to 500 in the last three years. Total harvest was 509 this year; down from previous years. High harvest was

776 in 1998, so the harvest and quota levels have dropped each year for the last three to four years. **Walker** asked if those were harvest numbers rather than quota numbers. **Erickson** said they are harvest numbers and the quota numbers have dropped. The high was 868 in 1998, the next year was 773, in 2000 it was 661 and last year it was 615. The proposal this year is 570, which is another drop in the quota.

The first general regulations change pertains to Wildlife Management Areas and the season, which is December 2 - 15, 2002. The next change relates to the statewide fall season, which is Oct. 27 - Dec. 1, and to a subdistrict reduction. One subdistrict was taken out that was under Special Permits. Instead of 100 permits in HD 101, this year the recommendation is for HD 101 only being a special subdistrict. The dates for the General Season were changed to correspond with deer and elk, Oct. 27 - Dec. 1. In the middle of the page of changes where it talks about the HD 101, it should say "The special permit in a portion of Hunting District 101 is valid from Dec. 2, 2002 - Apr. 14, 2003," rather than Dec. 3. Recommend dropping the special permits for that subdistrict for sheep in HD 100, which is in the Kootenai Falls area. They propose increasing the general quota for the whole area this year, thus eliminating the special permits with that increase.

Murphy said that under general licensing regulations, several individuals have approached him about the requirement to wear hunter orange. This is looking at the December 1 through April 15 timeframe. Personally, questions why it is required during the lion season. Knows hunters who do not wear it and they probably don't realize they are supposed to according to the regulations. Want to bring that up for discussion and get some feedback from the department about possible ramifications of making a change which encourages wearing hunter orange, but not require it during the lion chase season. **Erickson** said the statutes list the mountain lion as a big game animal and it therefore falls under the statute requiring hunter orange. The only exception is for bow hunters and that is also in the statutes. **Murphy** asked the department to research this issue later to make sure that statutorily it is required.

Erickson said another change is they are switching to the ALS numbers this year instead of Conservation License numbers.

There are no changes for hunting harvest permits for non-residents except creating HD 109, which was done during the deer/elk regulations discussion at the February Commission meeting. Added one hunting harvest permit for that district, which increased the total by one. **Mulligan** pointed out that at the bottom of that page of changes it should be 2002 instead of 2001. **Erickson** agreed that it should say "The Montana Fish, Wildlife & Parks 2002 mountain lion license . . ." **Dascher** also noted a correction on the bottom left column of the changes it reads, "These regulations and quotas were adopted by the MT Fish, Wildlife & Parks Commission on Jeff Hagener, Secretary." **Erickson** agreed that the sentence would be corrected.

ACTION: *Murphy moved to accept the General Regulations changes as recommended above by the department with the exception of HDs 100, 101 and 109; Lane seconded.*

Terry Zink, President, Northwest Houndsmen Assoc. - Would like a change in the hound handler permits which delay the lion chase season for non-residents for a week or two, maybe even to January 1. They know cats are being taken there and they are being moved to other areas. It's an enforcement thing that should be addressed. **Murphy** said it might have to do with non-residents being in the southern part of state. The impacts in Region 2 are significant as far as non-residents going there. That change and Senate Bill 142 could be part of the reason for the impacts. **Zink** said they knew the problem would move to other regions. They are breaking the law, bringing others there and basically doing illegal outfitting. Need to address the problem of them moving the cats around.

Jim Williams said it was an issue if a non-resident drew a hunter harvest permit, could they chase as well as kill? The change in the law was that they could still chase. Have heard there were non-residents there on opening day who did not have the hound handler permits. Didn't think anyone was caught so it is just what they heard from other hunters. The issue is to either allow half the draw of hunter harvest permit holders to kill only, but not to chase; or something like in Idaho where you have to draw to either hunt or chase. With Senate Bill 142 not sure authority-wise what can be done. **Erickson** said the issue is the hunter harvest permit is to restrict non-residents in Region 1 with hounds. The problem is that you can also hunt a lion without hounds. You don't need hounds to hunt lions during that December 1 to April 14 period. You get into difficult issues of restricting one but not another. How do you prevent one from coming when there are non-residents with licenses elsewhere with the ability to pursue lions anywhere there is a chase season open? They can be there legally chasing even though they cannot harvest a lion because they don't have the hunter harvest permit. Then there is the other issue where you can hunt a lion without hounds. Haven't thought of a way to deal with it that is easy to implement. That is why the last time they went with allowing them to chase. It is complicated. **Mulligan** said since there was no enforcement action, the quotas didn't close, and they weren't overrun, he is hesitant to take action without more objective evidence. **Williams** said this would be revisited in the next Legislature for potential expansion into other regions. Maybe that would be the time to look at the issue. It would still come back to the Commission for a decision. In the meantime could collect more data.

John Firebaugh, Wildlife Manager, Region 2 - In past years, the average harvest by non-residents of lions in Region 2 has been about 20-30% of the total harvest. In the late 1990s it went up to about 30-35%. Then last year with the change in Region 1, about 47% of the lions taken in Region 2 were by non-residents. Had a number of phone calls about the large number of non-residents who were displaced and seemed to be in Region 2, areas where there was good snow early in the season. With the exception of the Blackfoot, didn't seem to impact timing of filling the quotas. A couple of areas in the Blackfoot filled within the first week, which is a little higher than normal, and about half the harvest there was from non-residents. They went over the quota in one area in the Blackfoot by two or three lions. It was not a major problem, just more competition and they heard from quite a few residents about that problem. Knowing what was going on in Region 1, they kind of expected it. Responding to **Chairman Walker's** question if he observed increased traffic, **Firebaugh** said he did not but some of the wardens and biologists in the field indicated they thought there were higher numbers of non-resident license plates,

particularly in the Blackfoot in early December. They also heard from houndsmen about some in the Bitterroot.

CONTINUATION OF ACTION: Motion passed.

Glenn Erickson:

MOUNTAIN LION HUNTING DISTRICT QUOTAS

Region 1

Reduction of some quotas is based on a lion population density of 1 lion per 16 square miles and harvest rate of 26%.

Hunting harvest permits for non-residents remain the same except for HD 109. A permit was added for that district as it is a new district.

Changes:

HD 100	18 any legal lion	HD 120	10 any legal lion
HD 101	8 any legal lion	HD 121	19 any legal lion
HD 102	10 any legal lion	HD 123	5 any legal lion
HD 103	8 any legal lion	HD 124	3 any legal lion
HD 104	8 any legal lion	HD 130	10 any legal lion
HD 109	4 any legal lion, and 1 hunting harvest permit (this is the new area)		

In the special sub-quota districts, there is now subdistrict 101, east side of the Koocanusa area, with 5 any legal lion, which is a reduction from 8. Have deleted 100-02, Kootenai Falls, which was 8 legal lion last year.

In summary, changes in Region 1 are the quota changes mentioned above, reduction in subdistrict 101 (east Koocanusa area) to 5 any legal lion, and the 1 hunting harvest permit in HD 109 and new quota there of 4 any legal lion.

Murphy said he enjoys lion hunting and the chase, and finds it as exciting as most anything he can think of. But also has concerns about how lion populations impact densities of other game populations. Relies heavily on information presented by biologists and other hunters to find that balance. Although this recommendation is a reduction in the number of cats, it is receiving support. As long as they see a balance and are not impacting the elk, deer, goat and sheep hunting, they are on track.

ACTION: Murphy moved approval of the tentative mountain lion quotas recommended by the department for Region 1; Lane seconded.

Terry Comstock, Vice President, Northwest Houndsmen Assoc. - Thanked wildlife staff for the good job they did. Senate Bill 142 did work. It is way better. Also thanked Jim Williams and his staff, who met with every houndsmen group that hunts in a particular district to get their ideas on what they thought the quotas should be.

Walker said they have reduced numbers only on the resident side. It looked like the non-resident was about 1 per 10. The opportunity to deal with that only occurs in HDs 101 and 121. Asked if they considered that. **Williams** said essentially they left the hunter harvest permits as is to participate under the quota. In terms of input from the houndsmen, it did not seem an issue. Originally, the direction from the Commission was 10% based on the original round of meetings. **Mulligan** said the direction says no more than 10% of permits. **Erickson** said they may have used the 10% originally to set the hunter harvest permits, but didn't think it was in the regulations. **Mulligan** said he wants the text to match the numbers. **Dascher** said they originally used 10% to set that. As long as it is not a problem with residents and the houndsmen, she had no problem with it.

CONTINUATION OF ACTION: Motion passed.

Region 2

Erickson said most relate to the same issue. They had several meetings with houndsmen. Since the mid-1990s, the objectives have been to implement relatively high quotas to reduce lion numbers in response to poor calf and fawn ratios. Evidence suggests reduction has occurred and the previously high quotas should be reduced. In HDs 290, 291, 292 and adjacent areas there are reductions in female quotas. That is associated with a lion study trying to reduce the take on lions that leave the area and go back and forth. They want to increase that population so the research can follow through with the study design originally set up.

Changes:

HDs 210, 211 and 216 used to be one district. HD 210 was separated out in an attempt to change the harvest into the different locations to get a better distribution of the harvest amongst those hunting districts.

HD 210	5 total; 1 female & 4 males
HD 211 & 216	6 total; 2 females & 4 males
HD 240	3 total; 0 females & 3 males
HD 280	4 total; 1 female & 3 males
HD 283 & 285	4 total; 1 female & 3 males
HD 290 & 291	2 total; 1 female & 1 male

Walker also noted a correction in HDs 200 and 201 where the total should be 10 instead of 11. **Erickson** said there was another correction in HDs 202 and 203 where the total should be 11 instead of 13. Sent a recommendation to the Commission on a justification to reduce the size of the Missoula special management area. It is basically removing that Gold Creek portion, which is primarily Plum Creek in the Lolo National Forest land where there haven't been any conflicts with lions in that portion of the special management area. A legal description was also sent to the Commission.

Murphy said he has confidence with the work done there by the biologists. Keeps a close eye on this because of concerns over getting mule deer hunting back to point where they don't have

to designate a particular area. Will personally watch where they are with the predator numbers to give that opportunity back to the hunters.

ACTION: *Murphy moved approval of the tentative mountain lion quotas recommended by the department for Region 2; Walker seconded.*

Jim Lechleitner, Chairman of Board, Montana Houndsmen Assoc. - Have a problem with HDs 202 and 203. The quota in that area last year was 8 males and 5 females. They filled the quota. In HD 202 the seventh male was killed on 12/23, which left one male for the quota. Didn't harvest another male until March 2, so went 68 days without killing another male. Thinks it's a little steep. Have another situation at the special management unit that bumps up to HDs 202 and 203. Some of the cats are being harvested in 202 and 203 but getting registered in the special management unit. Would like to see recommendation go to either 4 and 4, or 3 and 3.

Grover Hedrick, President, Montana Houndsmen Assoc. – The current mountain lion license expires on 2/28 and the season goes to 4/14. Would like to know why. **Erickson** said that error will be corrected.

Walker asked for a response from the department on the initial comment regarding HDs 202 and 203. **John Firebaugh** said they have reduced quotas in that part of the region. A few years ago had as high as 25 lions with as many as 15 females in the quota. Have reduced quotas down to 13 and this year proposing a reduction to 11. Indications are that in the lower Clark Fork area (districts 200, 201, 202 and 203), the average number of lions treed by hound handlers has been the highest of any part of the region. The days for lion observation have been the lowest. That data indicates that in that region they probably have a better lion population than the remainder of the region. It's difficult not having good population data. They are going on past harvest rates and discussions with houndsmen. They meet annually and get their impressions. Adjusted it with a reduction of 2 for the coming year. Their recommendation is 7 male and 4 female. Responding to Jim Lechleitner's comment about the special management area, there is some concern lions are being harvested in adjacent districts but claim to be taken in a special management area. Will discuss that within the region and look at it pretty seriously next year.

CONTINUATION OF ACTION: *Motion passed.*

Region 3

Erickson said a change is proposed in hunting district series 300 with a total quota of 5; female subquota of 3. Believe lion densities have increased in recent years. As mule deer populations rebound, lion populations continue to expand. Local houndsmen concur that lion numbers in that district are increasing. Reached the quota in these districts last year in one week.

There was a late submission from the region for hunting districts 321, 331, and 332. The region proposed separating out HD 331 from the series to create a district by itself. HD 331 would be 4 total with subquota of 3 females. That would decrease the 321 and 332 districts to a quota of 3 from 5, and the female subquota at 2 instead of 4. The proposed quota represents an increase of

2 lions for the entire area, and reflects the department's desire to redistribute harvest amongst the 3 districts in a better fashion.

Joel Peterson, Region 3 Wildlife Manager, said HD 331 is a big mule deer district and is where most of the harvest is coming from. Hear concerns about lions from landowners in 321 and 332. Want to separate the harvest if they can. Biologists have talked to houndsmen in the area and received concurrence.

ACTION: *Mulligan moved approval of the tentative mountain lion quotas recommended by the department for Region 3, including the changes for HDs 321, 331 and 332; Dascher seconded.*

Murphy said he wanted to consider one area for potential change. For the last two years the male quota has not been filled but a lot of females have been treed in HDs 335, 339 and 343. Would like to consider raising female quota to 5, and leaving the total quota at 8.

Peterson said he doesn't feel raising that quota would make a big difference. The biologist, Gayle Joslin, looked at those areas to see if they're in the ballpark with their lion harvest and sustainable harvest for the area. Those quotas are fairly reflective of what they think is a sustainable harvest. **Rich DeSimone**, Wildlife Biologist, said in Region 1 they used a range of 1 lion per 16 square miles to 1 lion per 33. The 1 lion per 33 is the density they have now in the Garnets. They are very conservative in lower densities. They applied those to hunting districts in Region 3 with the lower densities. Those quotas were in line with maintaining lions at the lower densities. The total of 8 was very reasonable.

ACTION: *Murphy moved to amend the tentative mountain lion quotas recommended by the department for Region 3, with the amendment raising the quota in HDs 335, 339 and 343 from 4 females to 5, the total remaining at 8. Walker seconded. Motion carried unanimously.*

CONTINUATION OF ACTION on original motion, which was: *Mulligan moved approval of the tentative mountain lion quotas recommended by the department for Region 3, including the changes for HDs 321, 331 and 332. Motion includes Commissioner Murphy's amendment for HDs 335, 339 and 343. Walker seconded. Motion carried.*

Region 4

Erickson said there are two proposed changes in 400 series districts increasing the total quota to 3 (female quota 1, male quota 2). In the 422 series district propose decreasing the total quota from 20 to 15, which is caused by female quota reduction from 10 to 5. In the 400 series districts it is basically in response to hunter objections over too short a season. Had an earlier closure last year and anecdotal information suggests there is good lion distribution along the front portion of this area. In the 422 series district where they recommend reducing the female quota from 10 to 5, they've had increased female quotas since 1994. Houndsmen comments recently received suggest a reduction in the lion numbers based on observations during the season. Also had fewer negative comments from deer and elk hunters, and landowner complaints have declined.

ACTION: *Lane* moved approval of the tentative mountain lion quotas recommended by the department for Region 4; **Dascher** seconded. **Motion passed.**

Region 5

Erickson said no changes are recommended for the tentative mountain lion quotas in Region 5.

ACTION: *Walker* moved acceptance of the department recommendation for no changes in the tentatives for mountain lion quotas in Region 5; **Murphy** seconded. **Motion passed.**

Region 6

Erickson said no changes are recommended for the tentative mountain lion quotas in Region 6.

ACTION: *Dascher* moved acceptance of the department recommendation for no changes in the tentatives for mountain lion quotas in Region 6; **Lane** seconded. **Motion passed.**

Region 7

Erickson said Region 7 recommends changing the quota from 15 any lion to 20 any lion. Last year they met the quota and are not trying to establish a large lion population in eastern Montana. Based on meeting the quota early as well as most of them being adult males taken last year, there are still significant numbers of lions there. Hence, they'd like to increase the quota.

ACTION: *Walker* moved approval of the tentative mountain lion quotas recommended by the department for Region 7; **Dascher** seconded. **Motion passed.**

14. Moose and Sheep Auction Rules – Tentative. **Erickson** said they are the same rules as were adopted last year. These are as tentatives for adoption as final at the next Commission meeting. The Foundation for North American Wild Sheep (FNAWS) has conducted the auction of the sheep license since its inception, and has received bids as low as \$61,000 to a high of \$310,000. The 2002 sheep auction license received a high bid of \$90,000 in January. Legislation requires at least 90% of the proceeds be returned to the department.

The moose license auction has been conducted by the Montana Chapter of Safari Club International, FNAWS, Skyline Sportsmen, Rocky Mountain Elk Foundation and Montana Outfitters & Guides Assoc. over the years. Bids have ranged from \$4,000 to \$20,000, which was last year and the highest bid since inception.

Under the statutes, the Commission has three options in conducting the auctions: 1) authorize FWP to hold the auction, 2) authorize a wildlife conservation organization to do the auction, or 3) solicit bids from individuals in addition to requests for proposals from wildlife conservation organizations to auction the licenses. This time we recommend doing the same as in the past, which is solicit proposals from wildlife conservation organizations to conduct the auctions. In addition, if there are individual bids available they can be submitted at the same time. We would weigh those against revenue generated through the auctions in previous years. We have yet to receive individual bids in any given year. We ask that those proposals be sent to the department by July 15. Licenses would be for the 2003 license year.

Rules for use of the license are the same as last year: sheep license is valid for one legal or larger mountain sheep in any of the legally described 2003 bighorn sheep hunting districts during their open seasons in 2003, transferring provisions are the same where they have 15 days to transfer to one individual at the time of the auction, or they can also transfer for a serious illness or death of the successful bidder prior to the season. They cannot do any of these transfers for financial gain.

The same rules apply to the moose license except that it is valid for one antlered bull in any of the legally described moose districts during 2003.

Those are the recommended rules the department proposes adopting for this year, and recommend the Commission approve those as tentative.

Walker said last year on moose had a new applicant apply, John Poston from Boone and Crockett Club. The application was not considered. **Mulligan** said he didn't think they provided any background information on their past auction experience. He said they would definitely provide it this year. **Walker** asked Glenn Erickson to notify him.

ACTION: *Dascher moved acceptance of the department's recommended tentative rule for conducting the bighorn sheep and moose license auctions. Walker seconded. Motion passed.*

15. Ft. Peck Management Plan Appeal, Region 6 - Final. **Chris Hunter**, Fisheries Division Administrator, said that Curtis Spindler, on behalf of the Montana Bass Federation, filed the appeal. It was for a very specific part of the management plan, which is the ban on weigh-in type tournaments from June 15 through September 15. The weigh-in tournaments are where they hold fish in live wells during the day and at the end of the day go to a central location for weigh-in of those fish.

Curtis Spindler, Conservation Director, Montana Bass Federation. The dates under discussion are June 15 to September 15. Statewide it was originally going to be July 15 to September 15. Was recently given information showing that smallmouth bass mortality goes up when the temperature goes up. There has been one bass tournament on Ft. Peck in the last couple of years. According to the department management plan, they are not harming this fishery with one bass tournament. The fish catch rates and size have gone up. Would guess that water levels now will do more damage to fisheries in Montana than the few tournaments they hold. They are being included in a blanket rule of no weigh-in tournaments because of one walleye tournament two years ago. Have heard from walleye guys in Montana the reason those fish died is they drained their live wells to run in rough water because they didn't have much penalty for dead fish. The fish were lying in dry live wells most of the day. The bass tournaments have a penalty for dead fish and they do not want to hurt the fish.

It doesn't make sense that a lot of these rules come from one tournament and the public outcry, which was justified. It's a ten-year plan; it's one tournament causing some of the rules to be written this way. It has not been studied and there was no investigation into that. It did take a

long time to weigh their fish that day. In their one bass tournament, it doesn't take long to weigh their fish and get them back in the lake. Do not think they should be included in this rule with the walleye guys.

Have been told it is a social issue. The Bass Federation has one tournament; the walleyes have eight and pike has one. On a lake of that size, 10-12 tournaments throughout 6 months is pushing it being a social issue. There will always be people complaining about tournament fishing. Don't think it is justified.

Have been told they can have paper tournaments where they weigh the fish out on the water and release them there. At the marina is where the public will see them. They leave at 6:30 a.m. and return at 3:30 p.m. As far as the social issue, that's the only time they interfere with the public. Their 25 to 50 boats will not interfere much with local people fishing on a 240,000 acre lake.

Jim Satterfield, Region 6 Supervisor. Researched information from other states when this appeal was presented to the department. The new management plan provides for 12 tournaments per year at Ft. Peck. The June 15 to September 15 closure on weigh-in type tournaments for all species is what has been appealed. Tournaments are allowed during that window, but they must be paper tournaments where the fish are released on the lake and not brought in for weigh-in.

This proposal was included in the original management plan. In their public involvement process, 75% of the respondents supported the summer weigh-in ban. There were three unfortunate episodes with walleye weigh-in tournaments, and that motivated public opposition to these types of tournaments. The department provided for closure on weigh-in tournaments for all species during that period. That was what was provided to the public in the draft plan.

They have a lot of experience with walleye in summer tournaments, and can say unequivocally that summer tournaments for walleye are a problem. They don't have as good a handle on smallmouth bass. Throughout the U.S., most research in the Midwest and the southeast on bass tournaments has emphasized largemouth bass. They have a warmer temperature tolerance than smallmouth bass. They know smallmouth bass mortality is about three times higher than for largemouth bass, all other things being equal. Start seeing problems when water temperatures exceed 67 degrees. By June 15, their water temperatures typically exceed 70 degrees and then they dip to about 65 degrees by September 15.

There is no getting around this being a social as well as biological issue. The biological reality is that even if all the fish die in a tournament like this, on a 240,000-acre lake there is not a significant biological impact. However, they have learned from experience in the region that those situations are unacceptable to the public. From a social standpoint, the anglers and general public are not comfortable with events where they lose fish.

Hagener asked if the tournament this year is outside that time period. **Spindler** said, "Yes, it's coming up June 1-2." **Hagener** asked if their concern was in the future their tournaments aren't easily adjusted outside of that time period. **Spindler** said after September 15, participation drops off because of hunting. Before June 15, weather is a factor. Had planned an earlier tournament

before this plan came out. Next year the Montana Bass Federation will host the western divisional tournament, which is 10 western states, 12 participants from each state, who will come to Montana. They would like to do it at Ft. Peck the middle of May.

Another issue with the cut-off, if they have their tournaments early, are catching spawning bass, which is harder on the fish population. This is an issue tournament bass fishermen have dealt with for a long time as spawning smallmouth bass are easy to catch. They don't have catch and release tournaments in Region 1 early because of that issue. Very few smallmouth bass are put in that reservoir and they don't want to hurt the population. In their tournaments, if they have five fish die before or at the scales, that is high for them. They keep records on that and could provide it to the Commission. One weigh-in tournament in July or August shouldn't upset the public that much.

Hagener asked if their tournament rules prohibit having a weigh-in format with a boat out on the water like the walleyes do. **Spindler** said they don't have resources like the walleye people do. Most of those fishing the bass tournaments are from the west. It's a long trip and they don't have extra boats to put on the lake. Walleye grow long and skinny. Smallmouth stay short and fat. Their tournaments are weigh-in because it is based on how big they get. **Walker** said mentioned concern for tournaments during spawning, yet their tournament is June 2 this year and mid-May next year. **Spindler** said they did not pick the date for next year. That's when it is; they don't have a choice on it. It is representatives from 10 western states. May go to Noxon for that tournament next year. They know the fish at Noxon are spawning more in July than in May or first part of June. They will attempt to get that changed. The ethical issue comes up in all their magazines. Not all the fish are caught off spawning beds, but it does happen. Would like to see more ban on fishing during bass spawning periods.

Dascher said if they don't have a tournament on Ft. Peck next year, and can find another lake that works, then it has nothing to do with this plan. Asked if they were planning future tournaments during the June 15 – September 15 period. **Spindler** said their tournaments generally have been in that period. They don't normally do them early because of the weather. **Dascher** said he mentioned having a small group coming and don't have the boats like the walleye people do. There are bass fishermen all around Glasgow so surely they could recruit some of them to help with weigh-in. There are lots of volunteers when they have the walleye tournament. **Spindler** said there is a chance of that but they don't know any. People have not come to their tournaments offering to help weigh in fish. Doesn't feel they should have to as their tournaments are not a problem with management of the smallmouth fishery in that lake. Creel studies show they are not hurting that fishery. **Dascher** said she could agree biologically, and if the fish all died it probably would not hurt the biology of that lake. Has concerns about catching fish while they are spawning and could do as much damage then as when fishing during warm water part of the year. Guarantee you would not have wanted to be anywhere near Glasgow when there were problems in the past. You could not walk to the marina because of the stench from all the dead fish. People were irate about that situation. The group of citizens that helped the department write the management plan felt very strongly about this issue. They felt it was an equity issue and would like to stay with this plan. They agreed that biologically it wouldn't be hurting the lake, but didn't want to take a chance of this happening again.

Dascher said when the walleye folks have a tournament, they set boundaries as to where they will fish. Doesn't know where the bass folks will be fishing, but a main comment from fishermen on tournaments is that everywhere they want to go, a tournament fisherman is there. Does not have a problem with bass folks coming and having a tournament at Ft. Peck if they could figure out a time to work with them. When the plan was out for public comment, had over 700 people comment on it. Want to work with the Bass Federation and collect more information so they know for sure what will happen with these fish. **Spindler** said what they do see is very little mortality, but what they don't see is the next few days. Has talked to the department about doing delayed mortality studies. It comes down to money and resources. Again, everything that has been said is about walleye tournaments, not bass. Asked if there has been that big an outcry over bass tournaments. **Dascher** said it is tournaments in general. **Spindler** said that is because of two or three walleye tournaments. It's people who came from somewhere else and don't care.

Murphy asked if there is any research regarding distinction between walleye and bass. **Hunter** said there has not been a lot of research done. There is no question walleye are a cool water fish and more susceptible to the temperature problems. Over 67 degrees, smallmouth bass mortality is increased. It's not as unequivocal as the walleye information. **Dascher** heard a comment from someone with Walleyes Unlimited who said they were almost two years putting this plan together, and he felt it was unfortunate the bass folks waited until the last minute to make their concerns known. There is a provision in this plan for a yearly review of the plan. There will always be times an issue can be brought forth with additional information and changes can be made. **Walker** said this Commission and the study group has shown support for tournaments in general and a desire to protect the ability of groups to have fishing tournaments.

ACTION: **Dascher** moved to approve the final Ft. Peck Fisheries Management Plan as written, and approve the department's recommendation to deny the appeal. **Walker** seconded. **Motion passed.**

16. Fishing Access Site Enhancement Program Project Approvals - Information. **Chris Hunter** said today he wanted to show the types of things the regions are negotiating and the range of projects. Will present some at the June meeting. Some he may not because they cannot complete the negotiations in time. **Mulligan** said his understanding is each region is conducting research and prioritizing possibilities. Asked if the regions pursued these or if the potential participants approached the region. **Hunter** said in most of them the regions approached the participants. **Mulligan** said regarding the children's pond in Twin Bridges, the concept of providing some risk protection to the organization and the landowner is a good idea. The group approached the department, pushed to get this pond in place, and worked with the landowner to make it happen. It's a very good pond and well used. Will shortly look at the Dillon Children's Fishing Pond donation. Others are in the works with concept of local groups working with landowners to establish these by a donation on a cooperative basis and maybe match some federal funding. On the other hand have a letter from a legislator concerned about picking up new access sites, and spending more money on maintenance when budgets are tight. Want to make sure what we're doing is not putting at risk the concept of the donation and the cooperative

agreement, and later have to ask for more money. The urban fishing program is extremely important. Have no problem of protecting their liability.

17. Three Dollar Bridge Acquisition, Region 3 - Final. Paul Sihler, Field Services Division Administrator. The bridge is located in the upper Madison below Reynolds Pass Bridge. The property is about 100 acres in Madison County and includes three miles of river front. It is a nationally renowned fishing access site in private ownership for a long time. They have allowed people to fish for \$3/rod and it has been heavily used. When the property came on the market recently, River Network and Trout Unlimited put money together to purchase an option on the property to acquire it, maintain long-time public use of the site and maintain the riparian area along the river. The property was appraised at \$400,000. The partnership deal has the department paying \$250,000 from our fishing access acquisition funds, combined with \$100,000 from the National Fish and Wildlife Foundation, and a \$50,000 donation from River Network. An EA went out for public comment and all 64 comments favored the acquisition. The decision notice was issued April 23 and here today for Commission approval. Should the Commission approve it, would also require Land Board approval.

There will be no conservation easement on the property. The department expects to improve the site, subject to future environmental review and planning. Development would include signs, a latrine, parking area and fencing to manage livestock. FWP intends to honor a grazing lease on the property. Grazing issues are not entirely resolved because of the size and shape of the parcel. Any grazing system would have to be in cooperation with adjacent landowners. May even look at not having grazing on the site. FWP proposes to maintain the "Iron Ranger" asking for a \$3 donation for access to the site.

Dascher asked if transfer of federal encumbrance from Browne's Lake will work. **Sihler** said that fortunately it will. A land deal was approved a number of years ago where they have been looking for replacement property. This will fulfill that replacement need and allow them to close out another land project. That does not need to be part of any motion today as it is an administrative detail. **Walker** asked about the grazing effect on the riparian areas within this purchase and if there were damages now to the riparian area. **Bruce Rich**, Region 3 Fisheries Manager, said there is some evidence of grazing damage, but the site is not in bad condition due to grazing. To maintain some passability in the riparian for anglers, may want limited grazing. **Walker** said grazing has been evident in that area for a long time. The idea of closing it off and concentrating water access bothers him and statement about no decision on grazing is troublesome. **Rich** said the cowboys who run cattle on adjacent ranches said the parcel is small and by itself has no real value as part of a rotation. They said if it was excluded, wouldn't be a problem on a range-wide basis. For now want to leave that door open. They talked about where they might get funding for fencing and whether it would be used to exclude cattle continuously or have them inside the exclosure at times. Want some flexibility there. **Walker** said he is still not satisfied with that. The loss of grazing opportunity is quite small. The problem is concentration at the water. **Rich** said there is sufficient water off the main channel that the cattle can access. Cowboys told them it is not necessary for cattle to access this parcel for water.

Murphy asked how many landowners are in that stretch. **Hugh Zackheim**, River Network, said there are not many adjacent landowners. There is one to the north between the eastern boundary and the Reynolds Pass Bridge, and one to the south up to the border of this parcel. The rest of the property both north and south of the parcel is owned by one person who expresses interest in working cooperatively with FWP on a grazing system. There is a lot of water on the property with spring creeks. Options for grazing are considerable. A cooperative system should work.

ACTION: Mulligan** moved to approve the Three Dollar Bridge Fishing Access Site Acquisition, as proposed by the department. **Walker** seconded. **Motion passed.

18. Dillon Children's Fishing Pond Donation, Region 3 – Final. **Sihler** said the next project is the Dillon Fish Pond, which is more formally known as the Swenson Blacktail Meadows Urban Children's Fishing Pond and Blacktail Deer Creek Urban Fishing Corridor Acquisition. The purpose is to acquire a manmade pond to serve as a children's fishing pond within the town of Dillon and to acquire a riparian corridor along Blacktail Deer Creek to maintain as open space and provide access to the creek for fishing for children. The site is 14.27 acres, including both parcels. The Swensons are donating this in community spirit and interest in kids' fishing. There is a trail to the pond from Dillon so kids can bike to it. The EA was distributed on April 5, public comment period ended April 19, and a decision notice issued April 24. The public participation process was abbreviated because there has been overwhelming public support for the project. The project would be subject to terms of the subdivision covenants; however, the department was granted a variance from terms that were geared to commercial use. Site development is anticipated in a second phase and it includes parking, signs and fencing. Hope to work with outdoors groups and "Anglers Against Weeds" to help with weed control. **Mulligan** said this is a neat opportunity for the people of Dillon and the kids through the graciousness of people who have offered the donation, sportsmen's groups willing to work on the project and others who are involved. Recognize there are questions about the department picking up additional sites with costs for maintenance. People are offering to help with that and support the project. One key objective for the department is urban fishing opportunities.

***ACTION: Mulligan** moved approval to accept the donation of two lots for the pond and walkway in the Blacktail Deer Creek Subdivision in Dillon for use as an urban children's fishing pond and urban fishing corridor, as proposed by the department. **J. Lane** seconded the motion.*

Walker mentioned a letter they received from Senator Bob Keenan. He is involved with the State Parks Futures II committee and they were meeting in Dillon. When he learned of this site, he questioned it because of struggles with funding within the Parks Division with possibility of adding yet another site to the 328 in the existence. This letter is clearly concerned about budget and costs. We need to pay strict attention to this. It's not a bad point. There are funding concerns with Parks, yet we have a deal here that is so good we're holding ourselves back not to take the final vote. Is anything being done in terms of reviewing some of these 328 sites in place? Are there fishing access sites that need to be reviewed and perhaps be downgraded or no longer be fishing access sites? **Sihler** said he's not the right person to ask about that. It would be someone from the fisheries program. They did review all the fishing access sites four or five years ago. **Sihler** said he was not involved with that. Management and maintenance of fishing

access sites is done by Parks, but is not funded by Parks. It is funded by license dollars. There is a dedicated funding source set up in statute for maintenance of fishing access sites.

Chris Hunter said there is dedicated funding for fishing access site maintenance that is done by the Parks Division from fishing license sales. They are not currently reviewing status of the fishing access sites. **Mulligan** said the review was of what might be designated as a primitive access site. It was an attempt from individuals in the legislation to designate those and it ended up they allowed the Commission to designate them. **Hunter** said every angling group he has talked to believe more access sites are needed, not less.

Monger said around 1992 or 1993 they reviewed all of the 340 properties they own. They only list about 328 of the fishing access properties out of the total 340 they own. The difference in the number is no legal access to property they hope to get to sometime or the river has moved away from the property and they no longer own the waterfront. They looked at disposing of properties that no longer meet the water, but disposing of properties gets into a local politics nightmare. The argument by sportsmen is that while they can no longer get to the river from a property, there is value for hunting on it. Some regions have presented lands that are no longer viable for the fishing access site program and those properties are being used in land trades. Those are also properties where there may still be fishing access value but the value is better held by another agency such as the Forest Service or BLM. Will probably do another review. Something else they face when they want to get rid of a property is a neighbor may be interested in purchasing it. Constitutionally, any property the department disposes of must either be traded or sold on the open market for highest and best bid. Sometimes it is not politically feasible locally to sell a property out from under an adjacent landowner.

Mulligan asked if there is any opportunity to leverage this donation on some federal funds, or bank that if they don't have the legislative authority now. There are situations where matching funds are available if the state or some other entity provides a matching fund. The Legislature has to authorize that spending and suspect they have not in this case. **Monger** said they can take a donation and leverage a donation against other federal funds. At Travelers Rest State Park by Lolo they are doing exactly that. They knew they were doing it the day the initial donation arrived and they had a second parcel in mind. It was a chain of events type encumbrance put on that property to use for future federal matches. It is a very complex process and they have one year to complete it. For this pond in Dillon to be used in a future acquisition, would need the future acquisition in mind at this time before accepting the donation. **Mulligan** said he wasn't thinking so much about future acquisition, but rather cash to do improvements. Legislators are concerned about increased costs as the department picks up sites, but Commission Mulligan said he understood federal money was being left on the table because the department can't generate enough authorized budget to spend that money. There are interested parties in this case and he is involved with others who want to donate land and money. **Murphy** asked how far the money would go that the Beaverhead outdoors organization was putting into it up front for development and maintenance. Is there potential in the MOU for them to bring in additional dollars to provide for continued maintenance?

Bob Hartwell, President, Beaverhead Outdoors Assoc., said they have raised \$6,500 and have other projects going. They haven't entered an agreement because the pond has not been accepted. Once it is accepted, he has a committee of five individuals who will decide what needs to be done. They want to work with the department on it. They have fund raising events planned for further work on development and volunteers to help on the parking lot. **Walker** said he is concerned about driving up costs and that the legislators have legitimate concerns. Does not want to debate where the money is coming from today, but wanted to call attention to the fact that, though each of these projects is attractive, they must be cognizant of that. **Hartwell** said they are looking into grants from the federal government that they as an outdoors association could submit to help with additional things needed. They have a lot of volunteer help for this for labor. **Sihler** said Senator Keenan is chairman of a budget committee and FWP will be taking his concerns seriously. There are projects related to fishing access sites with DNRC in his area, and his constituents will want to see money appropriated to take care of those sites. In partial response to the question about disposal of sites, the Region 3 people passed him a note that there are two FASs they are trying to dispose of – Brown's Lake and Park Lake.

CONTINUATION OF ACTION: Motion passed.

19. Acceptance of Canyon Resources Minerals - Final. **Paul Sihler** said he is here to request final action and approval of this mineral rights transfer. As a part of the legal judgment and settlement of civil penalties for water quality violations between Montana Department of Environmental Quality (DEQ) and C.R. Kendall and Canyon Resources (CRK/CR), CRK/CR has agreed to a stipulated penalty in the amount of \$132,000 with 10% of the penalty being paid in cash to DEQ and the remainder penalty to be offset through a non-cash transfer. The non-cash transfer requires an additional offset, which brings the non-cash penalty to approximately \$178,000. DEQ has agreed the state will accept certain mineral rights owned by CRK/CR in lieu of cash and this transfer is intended to further fish and wildlife conservation as part of the settlement. It is the non-cash transfer that affects FWP as the mineral rights would be transferred, with the consent of the Commission, from CRK/CR to FWP, as the state's lead agency for fish and wildlife conservation.

When the department first proposed this to the Commission, concern was expressed about counties and that county governments be notified the department would proceed on this, especially because were not going through an environmental review process because of the exemption in MEPA rules for an enforcement action. A letter was written to each county involved and contacted the surface owners in the two conservation easements. Heard nothing back from the counties, and landowners in the conservation easements had no problem with the department acquiring the mineral rights.

Murphy asked for comments from DEQ and the mining company.

Jim Volberding, CRK/CR, said the mineral rights they are talking about are part of the old Anaconda Company mineral rights. Almost one million acres of lands in western Montana were acquired. The lineage is from Anaconda Company to ARCO. The estate is triply severed. In many cases the surface is state owned now. In other cases, it is under conservation easement.

ARCO retains the oil and gas on this property. The company approached DEQ with this as a creative way to put the violation and penalty behind them. View it as a win-win situation. **Sihler** added that there has been some controversy surrounding this for DEQ. From FWP's perspective, it's a big gift horse.

John Arrigo, DEQ Enforcement Division, said it is a creative solution, which avoids protractive litigation. The mining company does not have a lot of free cash to pay penalties. It is full resolution for violations of Montana water quality standards that occurred a couple of years ago. There are concurrent activities going on. They are under order to pump and treat some water, which is ongoing. This is just a penalty phase of that case.

ACTION: *Dascher moved to accept the transfer of mineral rights to FWP from C.R. Kendall/Canyon Resources as a part of the settlement action proposed between the Montana Department of Environmental Quality and C.R. Kendall/Canyon Resources. **Murphy** seconded. Motion passed.*

Paul Sihler said all of these items, except Swenson's Pond, will go before the Land Board.

Walker said that ends the agenda items. Asked Doug Monger to review the parcels with Director Hagener prior to next Commission meeting and would like to see a recommendation to proceed with the review before the next meeting. Had a couple of suggestions from Region 3. If it has been 10 years, it is probably time to look at that. **Monger** asked if it would be acceptable to put together a process for that review by the next meeting, but not yet commit then to review all 340 sites. **Mulligan** asked if the response to Senator Keenan has been done. **Monger** said the same letter was sent to Director Hagener and Monger said he is preparing the response to that letter. He would phrase it such that on this day the Commission and the Director discussed this in the public forum.

Walker said he wanted it in the record that he is concerned with game animals in urban situations, primarily deer. Asked the department to look at that situation/problem and review if they want to deal with additional legislation and/or mechanisms to help the Enforcement Division and local county attorneys become responsive to something that others may not see as a problem. Do that in light of large predators now being found in urban situations, continual bashing of automobiles, deer on city streets, etc. Bringing this up in context of baiting and salt licks being found in cities and towns. Need to be aggressive about this and wish to be public about it. **Peterman** asked if he wanted this as a discussion item as the next meeting and some kind of presentation. **Walker** said "Exactly." He said it runs the gamut; there are county attorneys who won't deal with it. There are persons who say they will have to be taken away in chains because they will not stop feeding deer. Have to respond to that. **Mulligan** said in Region 3 there are neighbors against neighbors because one is feeding and the other is not. **Peterman** said these are significant issues in several urban areas. The urban/wildlife interface is an incredible problem in Missoula, Kalispell and Helena. It is frustrating because so few tools are available to deal with it. Agree it is a big issue.

J. Lane wanted to direct Licensing or Wildlife to look into seeing that members of the military who were successful in the draw and then deployed and unable to hunt be able to turn in their permit, re-acquire their bonus points and excluded from the seven-year waiting period. Is there a problem and, if so, can that be remedied?

Meeting adjourned at 5:20 p.m.

Approved this 18th day of June, 2002

Dan L. Walker, Chairman

M. Jeff Hagener, Director